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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

19 CFR PARTS 7, 10, 145, 173, 174, 181, 191

RIN 1515-AB95

DRAWBACK

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the Customs Regulations regarding drawback. The document proposes to revise the regulations to implement the extensive and significant changes to the drawback law contained in the Customs modernization portion of the North American Free Trade Agreement Implementation Act; to change some administrative procedures involving manufacturing and unused merchandise drawback, for the purpose of expediting the filing and processing of drawback claims thereunder, while maintaining effective Customs enforcement and control over the drawback program; and to generally simplify and improve the editorial clarity of the regulations.

DATE: Comments must be received on or before (insert date 60 days from date of publication in the **FEDERAL REGISTER**).

ADDRESS: Comments (preferably in triplicate) must be submitted

to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Maryanne Carney, Chief, Drawback and Records Branch, New York, (212-466-4575).

Legal aspects: Paul Hegland, Office of Regulations and Rulings, (202-482-7040).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and unused merchandise drawback. The statute providing for specific types of drawback is 19 U.S.C. 1313, the implementing regulations for which are contained in part 191, Customs Regulations (19 CFR part 191).

The North American Free Trade Agreement Implementation Act, Public Law 103-182 (December 8, 1993), specifically Title VI thereof, popularly known as the Customs Modernization Act, significantly amended certain Customs laws. In particular, § 632 of Title VI effected extensive and major amendments to the drawback law, 19 U.S.C. 1313. Also, § 622 of Title VI authorized

the establishment of a "Drawback Compliance Program" as well as specific civil monetary penalties for false drawback claims.

Public Law 103-182 also approved and implemented the North American Free Trade Agreement (NAFTA). Section 203 of the Public Law provides special drawback provisions for exports to NAFTA countries. NAFTA drawback is separately provided for in part 181 of the Customs Regulations (19 CFR part 181). Drawback and other duty-deferral programs are addressed in subpart E of part 181. General drawback provisions under part 191 and the NAFTA drawback regulations in part 181 contain substantial differences (e.g., the "lesser of" calculation versus full drawback, same condition versus unused merchandise drawback, etc.) Separate claims are required for drawback claims governed by NAFTA (see 19 CFR 181.46 and 191.0a).

Accordingly, this document proposes regulatory revisions principally to part 191 in implementation of the statutory changes. In addition, this document proposes to generally rearrange and revise part 191 largely in an effort to further simplify and improve the editorial clarity of those regulatory procedures primarily dealing with the manufacturing and unused merchandise provisions, these being the most commonly used types of drawback. Several administrative changes are being proposed as well with respect to the regulatory procedures governing these provisions, for the purpose of expediting the filing and processing of drawback claims thereunder, while ensuring that

Customs has the necessary enforcement information to maintain effective administrative oversight over the drawback program. Also, minor conforming changes occasioned by the general reorganization of part 191 are made with respect to other parts of the Customs Regulations (19 CFR parts 7, 10, 145, 173, 174 and 181).

Specifically, with regard to part 173, a minor change is proposed whereby a party requesting the reliquidation of a consumption entry pursuant to 19 U.S.C. 1520(c)(1) would be required to state whether to the best of such party's knowledge, the entry is the subject of a drawback claim, or whether such entry was referenced on a certificate of delivery or a certificate of manufacture and delivery and thus could be made the subject of drawback. Likewise, a change is proposed to part 174 whereby a party filing a protest must state whether, to the best of such party's knowledge, the consumption entry whose liquidation is protested is the subject of a drawback claim, or whether it was referenced on a certificate of delivery or a certificate of manufacture and delivery and thus could be the subject of a drawback claim. A corresponding change is also proposed in part 191, whereby a drawback claimant would be required to state whether, to the best of such claimant's knowledge, any consumption entry identified or designated as a basis for drawback is either under protest or the subject of a request for reliquidation (19 U.S.C. 1520(c)(1)). In this

regard, when accelerated payment of drawback has been paid to a claimant on the basis of an entry of imported merchandise which has not been finally liquidated, and the duties on the import entry are increased or decreased in such final liquidation, drawback must be increased or reduced accordingly on liquidation of the drawback entry.

Proposed changes to part 191 other than the major changes described below include the addition of new definitions for purposes of part 191 in the section listing such definitions. New definitions for the following terms are set forth in the proposed regulations: Certificate of delivery; Certificate of manufacture and delivery; Act; Commercially interchangeable merchandise; Designated merchandise; Destruction; Exported article; Exportation; General manufacturing drawback ruling; Manufacture or production; Possession; Relative value; Specific manufacturing drawback ruling; and Substituted merchandise. Most of these definitions incorporate into the regulations terms which are used for drawback. The definition of commercially interchangeable merchandise is necessary because of the change (described elsewhere in this background) from fungibility as the standard for substitution to commercial interchangeability in the former same condition substitution drawback law (now unused substitution drawback law, in 19 U.S.C. 1313(j)(2)). Similarly, the definition of possession is added because possession of the exported merchandise is a requirement for drawback under

§ 1313(j)(2) and because the statute includes defining language. The definition of exportation is based on the definition of that term currently in 19 CFR 101.1(k), but notice is also given that an exportation may be deemed to have occurred: (1) under the Foreign Trade Zones Act (see 19 U.S.C. 81c(a)) when zone-restricted status is taken; (2) or under 19 U.S.C. 1309, if goods subject to drawback are used for certain aircraft or vessel supplies. The definition of manufacture or production is based on court cases and administrative rulings interpreting that phrase (see Anheuser-Busch Brewing Association v. The United States, 207 U.S. 556 (1908); United States v. International Paint Co., Inc., 35 CCPA 87 (1948); et al.). In regard to the latter case, it is noted that a manufacture or production, for drawback purposes, occurs even if the processing operation does not change the general use for which the merchandise may be used (e.g., as paint) but does change the particular use for which the merchandise may be used (e.g., as anti-fouling paint designed for preventing marine growth on the bottom of ships).

In addition, two current definitions, those of fungible merchandise and substitution drawback, are modified. In the case of the former, the modification makes it clear that the definition applies to both merchandise and articles, but does not change the definition of fungibility. In the case of the latter, instead of defining substitution drawback (referring only to substitution manufacturing drawback), as is currently true, the

definition defines substituted merchandise, and does so for purposes of each of the subsections of 19 U.S.C. 1313 authorizing such substitution.

In regard to the definition of fungibility, for drawback purposes "merchandise" is that which is imported, or substituted when substitution is permitted, and an "article" is that which is manufactured or produced, as provided for in the drawback law, from merchandise. Also in regard to the definition of fungibility, although the standard for substitution under unused (formerly same condition) drawback (19 U.S.C. 1313(j)(2)) is no longer fungibility (it is now commercial interchangeability, as discussed below), the definition of fungibility is retained in the proposed regulations because fungibility continues to be a significant concept in the proposed regulations (i.e., when merchandise or articles are identified by accounting method; see proposed § 191.14). The definition of fungibility was first added to the Customs drawback regulations for this purpose and before enactment of the substitution provision for 19 U.S.C. 1313(j)(2) (see T.D. 83-212, 19 CFR 191.2(l)).

Also related to definitions for drawback purposes, the current regulations (section 191.3) provide that duties subject to drawback include all ordinary Customs duties and marking duties assessed under 19 U.S.C. 1304(c). It is proposed to define "ordinary Customs duties", as used in this provision, to include finally liquidated duties paid on an entry, or withdrawal

from warehouse, for consumption and estimated duties paid on such an entry or warehouse, provided that the application and waiver currently provided for in section 191.71 are filed. Also defined as such "ordinary Customs duties" would be voluntary tenders of the unpaid amount of lawful ordinary Customs duties and any other payment of duties related to an entry, or withdrawal from warehouse, for consumption, such as payment of a demand for duties under 19 U.S.C. 1592(d), under certain enumerated conditions. This latter proposed addition to the definition of "ordinary Customs duties" is consistent with Customs current administrative practice (see Customs Service Decision 85-50 (1985)). The enumerated conditions referred to are that liquidation of the import entry or withdrawal must have become final prior to the payment to Customs, that the payment must be specifically identified as being of duties for a specific entry or withdrawal, and that the drawback entry in which the import entry or withdrawal is designated may not itself have been finally liquidated. In the case of voluntary tenders and other payments of duty, procedures are proposed for a written request and waiver by the drawback claimant and any other party responsible for the other payments of duties similar to the current procedures for the payment of drawback on estimated duties.

Other minor proposed changes are that a named officer or any other individual legally authorized to bind a corporation may

sign drawback documents, instead of only those named officers. This is consistent with current regulations regarding Customs business (see 19 CFR 111.3; see also 19 U.S.C. 1641(b)(1)). Correspondingly, the regulations on so-called (in the current regulations) general or specific "contracts" are proposed to be changed so that only the names of the persons who are authorized by regulation to sign drawback documents and who will sign such documents are listed.

(In regard to the above-referenced general or specific drawback "contracts", as discussed in detail below, it is proposed to change the terminology for these procedures, from "specific drawback contracts" to "specific manufacturing drawback rulings" and from "general drawback contracts" to "general manufacturing drawback rulings" and to set out the formats for applying for the specific manufacturing drawback rulings, and the general manufacturing drawback rulings, in Appendices to part 191 of the Customs Regulations. The remainder of the background to this document uses the proposed new terms (i.e., "specific manufacturing drawback ruling" is used instead of "specific drawback contract" and "general manufacturing drawback ruling" is used instead of "general drawback contract").)

Also in regard to general manufacturing drawback rulings, it is proposed to require that a description of the merchandise and articles covered by the ruling be submitted with the information required for letters of notification of intent to operate under a

general ruling, unless such information is specifically provided in the particular general manufacturing drawback ruling. It is proposed to modify the regulations for both general and specific rulings for manufacturing drawback so that, consistent with Customs treatment of corporations for drawback purposes (see Moberly v. United States, 4 Cust. Ct. 91, C.D. 294 (1940), and C.S.D. 89-12 (1989)), when a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to give notice of its intent to operate under, or apply for, the general or specific ruling and cannot operate under any ruling issued in favor of the parent corporation. Finally, in regard to general and specific rulings for manufacturing drawback, it is proposed to provide that they will remain in effect indefinitely, unless no drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years. If no such drawback claim or certificate is filed for 5 years, the ruling would automatically terminate following the publication of a notice to that effect in the Customs Bulletin. Currently, a drawback "contract" may remain in effect for 15 years unless a written request is filed to renew the "contract". This change would reduce unnecessary paperwork for drawback claimants and Customs.

Also among changes to part 191 not listed below are proposed modifications to the subpart of part 191 regarding drawback on

supplies for certain vessels and aircraft (current subpart I; proposed subpart K). It is proposed to add to the regulation regarding a composite (monthly) notice of lading of fuel laden on vessels or aircraft as supplies that the fuel included in such a notice includes fuel laden for flights or voyages between the contiguous U.S. and Hawaii, Alaska, or any U.S. possessions, consistent with the applicability of the underlying statute (19 U.S.C. 1309). Also, consistent with the changes to the Exporter's Summary Procedure (ESP) (i.e., to make that procedure an alternative, instead of a privilege; see below) and an April 17, 1978, administrative ruling, it is proposed to modify these regulations to make it clear that the ESP may be used for drawback under this subpart and that if the ESP is used, the applicable requirements must be complied with.

The major changes to part 191 necessitated by statute are addressed below, following which the major administrative changes made to part 191 are outlined.

Manufacturing Drawback

Under the direct identification manufacturing drawback law, 19 U.S.C. 1313(a), upon the exportation of articles manufactured or produced with the use of imported, duty-paid merchandise, 99% of the duty so paid may be refunded as drawback. Under substitution manufacturing drawback, 19 U.S.C. 1313(b), if imported, duty-paid merchandise and any other merchandise

(whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles, then upon the exportation of such articles, 99% of the duty so paid on the imported merchandise may be refunded as drawback, notwithstanding that none of the exported articles was manufactured with the imported merchandise.

Section 632 of the Customs Modernization Act (hereinafter § 632) amended § 1313(a) and (b) to permit drawback on articles destroyed under Customs supervision, in lieu of being exported. In addition, it is made clear that for drawback to accrue, the articles manufactured or produced cannot be used in the United States prior to their exportation or destruction.

The proposed regulations provide for a contract between the principal and agent when such a relationship is claimed to exist for purposes of substitution manufacturing drawback. The person who asserts that it is the manufacturer or producer by virtue of a principal-agency agreement under this section must establish that there was a contract between the principal and agent specifying the items in § 191.9(c)(1)(i) through (vi). The person asserting this relationship has the burden of providing satisfactory evidence to establish the above. The question of the existence of such a contract is an evidentiary question. Of course, the terms of a written contract are always easier to establish than those of an oral contract.

Principal-agency principles, in the drawback context, are

used for drawback purposes to meet the "one manufacturer" requirement in 19 U.S.C. 1313(b) (i.e., the requirement that the imported merchandise and the substituted merchandise must be used in a manufacture or production by the same person). With the use of principal-agency principles for drawback, the principal in such a relationship is treated as the manufacturer or producer when the agent performs that function as agent of the principal. The principal does not complete a certificate of delivery for merchandise transferred to the agent (because the principal, in effect, would be treated as transferring the merchandise to itself). The agent would be required to furnish a certificate of manufacture and delivery for the manufactured articles, relating to the designated or substituted merchandise and identifying the owner for whom the processing was conducted (i.e., to document the manufacturing or processing operation). However, such a certificate of manufacture and delivery would not assign the potential drawback rights to the principal (because, by virtue of the relationship, the agent would not have those rights to transfer; the rights would have remained in the principal).

Rejected Merchandise Drawback

Section 632 also amended the rejected merchandise drawback law, 19 U.S.C. 1313(c). Under § 1313(c), drawback is allowable upon the exportation of merchandise which is found not to conform to sample or specifications, or which is shipped without the

consent of the consignee. Such merchandise previously had to be returned to Customs custody prior to exportation, generally within 90 days after its release from Government custody unless Customs extended this period.

As amended by § 632, § 1313(c) extends the period for the return of merchandise to Customs custody to 3 years, permits destruction of the merchandise under Customs supervision in lieu of exportation, and allows drawback if the merchandise is determined to have been defective at the time of its importation without reference to purchase specifications or samples.

Unused Merchandise Drawback

Formerly, under 19 U.S.C. 1313(j)(1), drawback was allowable on the exportation, or destruction under Customs supervision, of imported merchandise which was not used in the United States before exportation or destruction, and which was in the same condition at the time of exportation or destruction as it was when imported. Under the substitution provision, 19 U.S.C. 1313(j)(2), a similar drawback was allowable if other (fungible) merchandise was instead exported, or destroyed under Customs supervision, provided that before exportation or destruction, the fungible merchandise was not used in the United States, was in the possession of the party claiming drawback, and was in the same condition at the time of exportation or destruction as was the imported merchandise when imported.

Section 632 liberalized these provisions in a number of ways. First, the requirement has been eliminated that the exported or destroyed merchandise be in the same condition as the imported merchandise when imported. Now it only must have been unused. For example, chemicals which deteriorated after importation are not in the same condition as the imported merchandise when imported and were not eligible for "same condition" drawback. Now such goods would be eligible for drawback under § 1313(j) as "unused". Second, the provision interpreting the restriction on "use" has been changed. Formerly, this provision provided that the performing of certain incidental operations on imported or substituted merchandise which did not amount to a manufacture or production for drawback purposes was not a "use". The new provision provides that the performing of <u>any</u> operations or combination of operations not amounting to a manufacture or production for drawback purposes on the imported or substituted merchandise is not a "use". The list of examples of the operations involved was expanded to include, but is not limited to: testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking, provided that they do not amount to manufacture or production for drawback purposes.

In addition to the foregoing, a number of additional statutory changes were made by § 632 with respect to the

substitution provision, 19 U.S.C. 1313(j)(2). The substituted merchandise exported or destroyed for drawback need no longer be fungible (commercially identical) with the imported merchandise. Instead the imported and substituted merchandise must be commercially interchangeable. The legislative history of § 632 states that in determining whether merchandise is "commercially interchangeable", Customs should consider, but not be limited to, such factors as Governmental and recognized industrial standards, part numbers, tariff classification and values. Such merchandise, to be commercially interchangeable, need not be interchangeable in all situations.

The proposed regulations would require a determination of "commercial interchangeability" for all claims filed under 19 U.S.C. 1313(j)(2). This determination can be obtained in one of three ways: (1) a formal binding ruling from the Entry and Carrier Rulings Branch, Office of Regulations and Rulings, (2) a nonbinding predetermination request sent directly to the appropriate drawback office, or (3) submission of all the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed. The details for the documentation needed are outlined in the regulations. In the interest of administrative efficiency and because commercial interchangeability is no more restrictive than fungibility, all prior unrevoked rulings finding merchandise to be fungible may continue to be relied upon to

establish commercial interchangeability and reapplication is unnecessary for the same merchandise.

Moreover, the party entitled to claim drawback under § 1313(j)(2), as amended by § 632, has now been more precisely defined. Such party must either be the importer of the imported merchandise, or must have received, directly or indirectly, from the importer the imported merchandise, commercially interchangeable merchandise, or any combination thereof. Thus, the proposed regulations allow for multiple transfers of imported or substituted merchandise, but do not permit multiple substitutions (see 19 U.S.C. 1313(j)(2)(C)(ii)). Such transfers must be documented by a certificate of delivery. For example, it would be permissible for party A to import merchandise, transfer to party B commercially interchangeable merchandise documented by a Certificate of Delivery, and for party B to transfer the commercially interchangeable merchandise to party C documented by a Certificate of Delivery. If party C exports the merchandise, then party C is entitled to claim drawback, or to assign the right to claim drawback back through the chain of possession. To be entitled to claim drawback, the claimant must have been in possession of the specific substituted merchandise which is exported or destroyed with drawback. In this latter respect, the concept of possession under § 1313(j)(2), as amended by § 632, is further elucidated, to expressly include ownership while in bailment, in leased facilities, in transit to, or in any manner

under the operational control of, the party claiming drawback.

Substitution of Finished Petroleum Derivatives

As amended by § 632, drawback is payable under § 1313(p) (19 U.S.C. 1313(p)), upon the timely exportation of an article which is of the same kind and quality as a qualified article. A qualified article is essentially either an imported, duty-paid article, or a manufactured article that would be eligible for drawback under 19 U.S.C. 1313(a) or (b), should such qualified article itself be exported; furthermore, the qualified article, to be such, must be described in headings 2707, 2708, 2710-2715, 2901, and 2902, or in headings 3901-3914 (to the extent that these latter headings apply to liquids, pastes, powders, granules and flakes), of the Harmonized Tariff Schedule of the United States (HTSUS).

Also, for drawback to accrue under § 1313(p), the exporter of the exported article must have imported the qualified article or have manufactured it under § 1313(a) or (b); or have purchased or exchanged, directly or indirectly, the qualified article from an importer, or from a refinery or facility which produced the article under § 1313(a) or (b). In any event, the qualified article must have been manufactured, imported, or acquired by the exporter in the aforementioned manner, in a quantity at least as great as the quantity of the exported article. In addition, the exported article must be exported during the period in which the

qualified article is manufactured or produced under § 1313(a) or (b), or within 180 days after the close of such period; or within 180 days after the date of entry of a qualified imported article.

To be of the same kind and quality as the qualified article (solely for the purpose of § 1313(p)), the exported article must fall within the same 8-digit HTSUS tariff classification as, or be commercially interchangeable with, the qualified article. The drawback payable pursuant to § 1313(p) is 99% of the duty attributable to the qualified article when the qualified article is a manufactured article that would be eligible for drawback under 19 U.S.C. 1313(a) or (b) and 100% of the duty attributable to the qualified article when the qualified article is an imported, duty-paid article and no such manufacture or production under § 1313(a) or (b) is involved (19 U.S.C. 1313(p)(4)).

Packaging Material

Section 632 also amended 19 U.S.C. 1313(j)(4), recodifying this provision as 19 U.S.C. 1313(q), to allow drawback on imported material used to package or repackage goods that are exported or destroyed under Customs supervision and are eligible for drawback under the manufacturing, rejected or unused merchandise drawback provisions (19 U.S.C. 1313(a), (b), (c), or (j)). Drawback is payable under the particular provision to which the packaged goods themselves are subject. The duty refund on the packaging material is, of course, based on the particular

tariff provision under which the packaging material itself was entered.

Filing Under Wrong Subsection

Section 632 also amended the drawback law to provide that if a claimant files for drawback under one provision of § 1313, and Customs believes that drawback is more properly allowable under another provision thereof, the claim may simply be deemed filed under such other provision and processed with drawback accordingly.

The legislative history to this provision makes it clear that this provision is not intended to require Customs to investigate all alternatives in addition to the claimed basis before liquidating a drawback claim as presented. That is, the burden of bringing to Customs attention the possible applicability of the alternative subsection is on the claimant, not Customs. Claimants who are denied drawback under the provision claimed may raise alternative claims under another provision by protest under § 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514) (see 19 CFR part 174).

Since § 1313(r)(2) specifically requires that the claim be allowable under such other subsection (i.e., not the subsection under which the claim was originally filed), the requirements in the law for drawback under the other subsection must be met. For example, if the original claim is under subsection (a) or (b) and

the other provision is subsection (j), exportation or destruction would have to be within 3 years of importation, not 5 years; if the original claim was under subsection (j) and the other provision was subsection (c), the merchandise would have to be timely returned to Customs custody for exportation or destruction. These are statutory requirements, and cannot be waived.

Successorship Under 19 U.S.C. 1313(b) and (j)(2)

Under substitution manufacturing drawback, 19 U.S.C. 1313(b), the party manufacturing the articles on which drawback is claimed also must have used in manufacture the imported, duty-paid merchandise which forms the basis for the claim. Similarly, under the substitution unused merchandise provision, 19 U.S.C. 1313(j)(2), in pertinent part, the drawback claimant must have either imported the duty-paid merchandise, or received from the importer the imported merchandise, commercially interchangeable merchandise, or any combination thereof (in addition to possessing the exported or destroyed merchandise on which drawback is claimed).

Section 632 adds a new provision, codified as 19 U.S.C. 1313(s), which, under certain conditions, authorizes a business entity (the successor) to obtain the pre-existing drawback rights, whether vested or contingent, of another party (the predecessor) in the course of either acquiring all or

substantially all of the rights and liabilities of such party, or acquiring the assets and business interests of a single plant, division or other business unit of such party, provided, in the case of the latter, that the value of the transferred property (real and personal) as well as intangibles, exceeds the value of the drawback rights.

As a result, in manufacturing drawback, § 1313(b), this enables a company to satisfy the "one manufacturer" requirement. Duty-paid merchandise used in manufacture by the predecessor before the date of acquisition (the succession) may thus form a basis for drawback on articles manufactured by the successor after the date of succession. The use of the duty-paid merchandise by the predecessor is imputed to the successor.

Likewise, in substitution unused merchandise drawback, § 1313(j)(2), under the general circumstances outlined above, duty-paid merchandise imported by the predecessor before the date of succession may form a basis for drawback on exported or destroyed merchandise possessed by the successor after the date of succession. The importation of the duty-paid merchandise is implicitly ascribed to the successor.

Similarly, commercially interchangeable merchandise received by a predecessor before the date of succession (19 U.S.C. 1313(s)(2)(B)) could become the basis for drawback on substituted merchandise received by the successor after the date of succession.

Agricultural Products Subject to Drawback

Section 404(e)(5) of the Uruguay Round Agreements Act (URAA) (Pub. L. 103-465), codified as 19 U.S.C. 1313(w)(1), states that no drawback shall be available with respect to an agricultural product subject to an over-quota rate of duty established under a tariff-rate quota, except pursuant to 19 U.S.C. 1313(j)(1) (direct identification unused merchandise drawback). In addition, § 422(d) of the URAA, codified as 19 U.S.C. 1313(w)(2), provides that drawback shall be available under 19 U.S.C. 1313(a) (direct identification manufacturing) on any tobacco recognized as an agricultural product that is subject to an over-quota rate of duty established under a tariff-rate quota.

Because this statute precludes the availability of drawback "with respect" to a described agricultural product, the proposed regulations provide that no drawback will be available when either the designated imported merchandise or the substituted merchandise, if substitution drawback is claimed, is such an agricultural product. Additionally, based on the legislative history to this provision of the URAA, which makes it clear that the limitation on drawback applies only to merchandise for which the over-quota tariff must be paid (i.e., only that exceeding the quantity provided for in the tariff rate quota), the proposed regulations make clear that the restriction applies to merchandise or articles to which the over-quota tariff rate is

applicable.

Major Administrative Changes

The proposed revision of part 191 also presents several administrative changes and additions to the regulatory procedures principally governing the manufacturing and unused merchandise provisions (19 U.S.C. 1313(a), (b), and (j)).

Manufacturing Drawback "Contracts"

Under the current regulations, Customs requires manufacturers or producers of articles intended for exportation with drawback to apply for a so-called "specific drawback contract" (see subpart B of part 191) or a so-called "general drawback contract" (see subpart D of part 191).

In the case of the former, manufacturers or producers are currently required to file with the appropriate Customs office a proposal describing the manufacturing operation fully and the method of compliance with all requirements of the drawback law and regulations, to make a statement as to the records which will be maintained, and to agree to follow the methods and keep records concerning drawback procedures. Currently, Customs makes available sample proposals to prospective drawback applicants who request them. Customs reviews proposals submitted by manufacturers or producers and, if the proposals comply with the law and regulations, approves the proposals by means of a letter of approval to the applicant and publication in the Customs

Bulletin of a synopsis of the approved proposal.

In the case of the latter, Customs currently publishes in the Customs Bulletin an offer for a "general drawback contract" in situations where numerous manufacturers or producers have similar operations and wish to claim drawback. Any manufacturer or producer who can comply with the terms and conditions of the published offer may adhere to it by simply notifying a drawback office in writing of its acceptance and providing certain identifying information, after which the appropriate drawback office acknowledges, in writing, the letter of adherence.

After thorough review and consideration of these procedures, changes to the current terminology for these procedures are proposed. In the case of "specific drawback contracts", what actually is involved is the request, by a prospective drawback claimant, for a ruling, in a special format described by Customs in the "sample proposals" referred to in the current regulations. Customs reviews the request and, if it complies with the law and regulations (e.g., if the specifications proposed for same-kind-and-quality substitution under 19 U.S.C. 1313(b) meet the requirements for such substitution), Customs grants approval of the proposal. This is basically the procedure under which administrative rulings are obtained under part 177 of the Customs Regulations, with the addition for drawback of the special format described in the "sample proposals". Accordingly, it is proposed to substitute for the "specific drawback contracts" provided for

in the current regulations the term "specific manufacturing drawback rulings".

As is true in the current regulations, it is proposed that unless operating under a general manufacturing drawback ruling (currently, a "general drawback contract"; see discussion below), each manufacturer or producer of articles intended to be claimed for drawback will be required to apply for a specific manufacturing drawback ruling. Sample formats for applications (combined application under 19 U.S.C. 1313(a) and (b); application under 19 U.S.C. 1313(b); application under 19 U.S.C. 1313(b) for petroleum drawback (T.D. 84-49); application under 19 U.S.C. 1313(d); and application under 19 U.S.C. 1313(g)) are contained in Appendix B of proposed part 191. Except for the described changes to the terminology and conforming changes necessitated by the proposed changes to the regulations, as described in this document, the sample formats for applications for specific manufacturing drawback rulings contained in Appendix B are the same as the corresponding sample "specific drawback contracts" currently made available by Customs to persons requesting them.

Also as is currently true in regard to "specific drawback contracts", it is proposed that an application for a specific manufacturing drawback ruling be submitted to Customs Headquarters which will review it for consistency with the law and regulations and, based upon such review, approve or

disapprove the application. If approved, a letter of approval will be issued to the applicant and a synopsis of the ruling will be published in the Customs Bulletin. If disapproved, the applicant will be promptly notified, with notification of the specific reason(s) for disapproval. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to another office in Customs Headquarters.

In the case of "general drawback contracts", what actually is involved is the publication by Customs, as a Treasury Decision, of the requirements and specific interpretations for a particular kind of operation (for example, certain manufactures involving orange juice (T.D. 85-110) or steel (T.D. 81-74)). The operation is one used by numerous manufacturers or producers. A manufacturer or producer using one of these operations may, basically merely by giving Customs notice, claim drawback using the procedures in a "general drawback contract". Thus, these procedures are basically a publication of a general ruling. It is proposed to substitute for the "general drawback contracts" provided for in the current regulations the term "general manufacturing drawback rulings".

As is true in the current regulations, it is proposed that a manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification to give Customs notice of the

manufacturer's or producer's intent to operate under the general ruling. The current general rulings (for manufacturing under 19 U.S.C. 1313(a) (T.D.s 81-234 and 83-123); manufacturing under 19 U.S.C. 1313(b) for agents (T.D. 81-181); manufacturing under 19 U.S.C. 1313(b) for orange juice (T.D. 85-110); manufacturing under 19 U.S.C. 1313(b) for steel (T.D. 81-74); manufacturing under 19 U.S.C. 1313(b) for refined sugar (T.D. 81-92); and manufacturing under 19 U.S.C. 1313(b) for raw sugar (T.D. 83-59)) are contained in Appendix A of proposed part 191. Customs proposes to update this Appendix whenever new general manufacturing drawback rulings are issued or any such existing T.D.s are revised. Except for the described changes to the terminology and conforming changes necessitated by the proposed changes to the regulations, as described in this document, the general manufacturing drawback rulings contained in Appendix A are the same as the corresponding "general drawback contracts" published in the existing referenced Treasury Decisions.

Also as is currently true in regard to "general drawback contracts", the letter of notification of intent to operate under a general ruling will be submitted to the drawback office where drawback claims are intended to be filed, and will contain certain identifying information. The drawback office is required to acknowledge, in writing, this letter of notification, after which no further action is required before drawback claims may be filed on the basis of the general manufacturing drawback ruling.

These required procedures (i.e., notification and acknowledgement) are intended to facilitate Customs administrative processing of manufacturing drawback claims to be filed.

Completion of Drawback Claims

In order to better ensure consistency and uniformity of practice, the section of the regulations dealing with the completion of drawback claims has been rewritten to clarify what documents constitute a complete drawback claim. The claim will be considered to be complete if all the required documentation is present with all the basic information provided.

In regard to certificates of manufacture and delivery, which are a required part of a complete claim when the claim is based on such a certificate, it is recognized that a certificate of manufacture and delivery may relate to articles which are the subject of more than one drawback claim. In such an instance, only one certificate of manufacture and delivery is required and the proposed regulations specifically provide that certificates of manufacture and delivery applicable to a claim must be filed with the claim, unless previously filed with Customs (if previously filed, the certificates must be referenced in the claim).

In cases in which there is some minor change or addition needed, such as a missing signature, numbers added incorrectly, information placed in the wrong part of the form, etc., the claim

will be accepted and the 3-year time period to file a complete drawback claim after the date of exportation will be met although the claim must be corrected. However, if documentation is missing or the claim contains major inaccuracies and inconsistencies, the claim will be rejected and returned to the claimant for correction. The claim will not be considered to have been accepted by Customs and the 3-year time period will not be considered to have been met by the filing of such an incomplete claim. Proposed rules have also been included to allow Customs to require claimants to restructure drawback claims in order to improve administrative efficiency, as long as the restructuring is not shown to be impossible or impractical for the claimant.

The regulations also differentiate between "perfecting" and "amending" a claim which has been accepted. The claim is "perfected" when the claimant, in response to a request from Customs, makes minor changes to the claim or provides documentation in support of the claim. The claim is "amended" when a major change must be made to the claim such as the designation of a different import entry or the claiming of a different export.

Privileges

The proposed regulation establishes Waiver of Prior Notice to Export or Destroy Unused Merchandise (WPN) (§ 191.91) and Accelerated Payment (AP) (§ 191.92) as special privileges that

may be requested by formal application. The Exporters' Summary Procedure (ESP) is no longer a special privilege because of the changes in the filing requirements. ESP is now available to all claimants as an option for establishing exportation. The application requirements for privileges are designed to address key internal controls identified by the Treasury Inspector General by providing Customs: (1) reasonable assurance of the accuracy of drawback claims; and (2) a sufficient basis to appropriately verify the validity of drawback claims. These key internal controls are applicable when the issue is whether to grant a privilege. Claim sufficiency would be determined on an assessment of past facts.

Customs will allow claimants or exporters who hold existing privileges to continue utilizing these privileges for a period of one year after the effective date of the new drawback regulations. Those who want to continue these privileges must reapply prior to the conclusion of the one-year period under the requirements of the new regulations. Privileges will be revoked unless the claimant reapplies. This revocation would apply to all exportations subsequent to the revocation.

Claimants may continue with their privileges once the new application has been submitted and received by Customs, unless Customs denies the new application. The one-year period provides a reasonable opportunity for applicants to assemble and submit the required material.

Customs will act on the application within 90 days of submission or notify the applicant in writing regarding the reasons for requiring a longer time for acting on the application. Customs objective is to use the application process as an opportunity to promote informed compliance in the drawback process.

If applications for privileges are received by Customs prior to the date of publication (not effective date) of the final rule in the **Federal Register**, Customs will process these applications based on the current drawback procedures and regulations in place. Claimants must understand that even though the applications will be processed under the drawback regulations and procedures in place at the time of receipt of the applications, they will still be required to reapply for these privileges within one year from the effective date of the new drawback regulations. Therefore, Customs would encourage new applicants to prepare their applications under the guidelines of the new regulations.

Notice of Intent to Export or Destroy

Claimants filing a claim under 19 U.S.C. 1313(j) or (c) must notify Customs prior to exportation or destruction (notice of destruction procedures also are applicable to drawback under 19 U.S.C. 1313(a) and (b)). This notice should be filed at the port of intended examination or destruction. It must provide the

information needed by Customs to determine if the merchandise should be examined. Under § 1313(c), the merchandise must always be returned to Customs custody. Customs intends to make this determination in an expedited manner and it will notify the party designated on the Notice of Intent to Export or Destroy of its decision. It is the responsibility of the filer to deliver the goods in a prompt manner once the filer receives notice of Customs decision to examine the merchandise. Customs will work with the claimant if a problem arises on how promptly the merchandise should be presented to Customs, but it should be done as promptly as is reasonably possible.

The terms "present", "presented", and "presentation", as used in proposed § 191.35(c) and (d) and in proposed § 191.91(c)(1)(iv), mean the actual transporting of the merchandise to a location where Customs can examine it. Such transporting of the merchandise, however, is to take place only after Customs has notified the exporter or claimant of Customs decision to examine the merchandise.

There are two different situations which are envisioned here. The first is a situation in which examination takes place at the premises of the claimant or exporter. The second is a situation in which the exporter or claimant transports the merchandise to a Customs designated location. In either of these situations, arrangements must be made mutually between Customs and the exporter or claimant.

For exports that occur on or after the effective date of the regulations, a Notice of Intent to Export or Destroy must be filed with Customs, unless the exportation is covered by an existing waiver of prior notice. For destructions, a Notice of Intent to Export or Destroy must continue to be filed with Customs in all cases.

In addition, the notice of exportation form (Customs Form 7511) would be eliminated, and the drawback entry forms would be consolidated into one form (Customs Form 331). Furthermore, a new form would be devised on which a party would give advance notice of intent to export or destroy merchandise or articles for drawback purposes.

In recognition of the realities of the marketplace, it is further proposed to reduce the time frame from the current period of 5 working days to 2 working days from the date of intended exportation, within which prior notice of intent to export, unless waived, must be given to Customs for unused merchandise drawback, 19 U.S.C. 1313(j). A new Customs form (not a drawback entry form) will be devised on which prior notice would be given. Unless the claimant should be advised by Customs to the contrary during this 2-day period, the subject merchandise could thereafter be exported without delay. A drawback entry would later be filed with Customs.

The proposed regulations allow a drawback claim to be filed for qualifying merchandise which has been destroyed under Customs

supervision. However, if a drawback claimant has not filed the Notice of Intent to Export/Destroy at least 7 working days prior to the intended destruction of the merchandise, the Customs Service must reject the drawback claim.

Once the Notice of Intent to Export or Destroy has been filed, the Customs Service has four working days to advise the party filing the notice as to whether Customs will witness the destruction. If the party is not so notified within four working days, the merchandise may be destroyed without delay and the destruction will be deemed to have occurred under Customs supervision.

Evidence of destruction must be included with the drawback claim.

For multiple or continuous drawback destructions other prearranged procedures may be developed with the applicable drawback office to foster administrative efficiency.

Retroactive Waiver of Notice of Intent to Export

The proposed regulations eliminate the retroactive waiver practice which was reported as a significant internal control weakness by the Treasury Inspector General. However, the proposed regulations allow a <u>one-time</u> opportunity for drawback claims under 19 U.S.C. 1313(j) on merchandise which a party exported or destroyed without having provided Customs with prior notice. This was included to: (1) provide a reasonable method

for first time claimants or exporters who were not aware of the requirement for prior notice of intent to export to obtain such drawback; and (2) make potential claimants aware of the waiver privilege and how to apply for it.

More than one claim may be included in this one-time opportunity, subject to the time requirements for filing complete claims (three years from the date of export). This would enable claimants to file for unused merchandise drawback on exportations which occur before the claimant may have known of the requirement for prior notice of intent to export.

Waiver of Notice of Intent to Export

Claimants and exporters may apply for a waiver of the requirement (under proposed § 191.35) to notify Customs of intent to export unused merchandise. The proposed regulations require that applications include sufficient information about merchandise, export activities and recordkeeping to provide Customs reasonable assurance that merchandise subject to drawback claims will be unused and exported. The information will also give Customs a sufficient basis for verifying unused merchandise drawback claims.

When applying for the waiver or the one-time application to file drawback claims on past exports, as provided for in proposed § 191.36 of the regulations, a certification by the claimant is required. The claimant must certify the ability to support with

business, laboratory or inventory records (prepared in the ordinary course of business) that the imported and exported or substituted merchandise (as applicable) was not used in the United States and, if substituted, was commercially interchangeable with the imported merchandise. The certification must also state that documentary evidence establishing compliance with all other applicable drawback requirements is likewise available. What is generally referred to is evidence (when applicable):

1. Of possession of the substituted merchandise within statutory time periods.

2. That the export and import transactions upon which the claim is based are within statutory time periods.

3. That the exportation is bonafide.

4. That Certificates of Delivery, when necessary, are in the possession of the claimant.

5. That any waivers or assignments from one party to another, when necessary, are in the possession of the claimant.

6. That any facts or conditions to complete the claim can be supported, such as those for successorship.

It is proposed that Customs approval of an application for the waiver of prior notice privilege would be conditioned from the outset on the agency's right to immediately stay the privilege holder's operation under the privilege, for a specified reasonable period, should the agency desire for any reason to

examine the merchandise being exported with drawback for purposes of verification. This key proposed limitation on the grant of approval of the privilege would not be an adverse action, suspension, or other form of sanction against the privilege or privilege holder. Rather, it is a proposed restriction on the grant of the privilege itself. See, e.g., Atlantic Richfield Co. v. United States, 774 F.2d 1193, 1201 (D.C. Cir. 1985). The Customs Service believes this limited privilege structure would best protect the revenue and the public interest in sound administration of the drawback program. Accordingly, the agency proposes to provide the privilege holder a letter notifying it of any stay, specifying the reason(s) therefor, and the period in which the stay will remain in effect. The stay would expire at the end of the period specified in the agency's letter, or such earlier date as the agency notifies the privilege holder in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the privilege could resume. The mere lifting of a stay is not tantamount to a certification of compliance; it simply reactivates the agency's predictive judgment in granting the privilege in the first place.

Accelerated Payment of Drawback

As is true under the current regulations, accelerated (i.e., before liquidation) payment of drawback claims is available for drawback claims under the manufacturing, rejected, or unused

merchandise law, as well as claims under the law for substitution of finished petroleum derivatives. The proposed regulations require that applications for this privilege include sufficient information about the applicant and its drawback program, including specific information about the bond coverage that the applicant intends to use to cover accelerated payment of drawback, to provide Customs reasonable assurance against losses to the revenue when accelerated payments of drawback are made. The proposed regulations also require a certification by the applicant that all applicable statutory and regulatory requirements for drawback will be met and a description (with sample documents) of how the applicant will ensure compliance with these requirements. The detail required in this description will vary, depending on the size and complexity of the applicant's accelerated drawback program. To assist applicants, Customs will make available a sample format for requests for accelerated payment of drawback.

It is proposed that Customs would review and verify the information submitted in and with the application and, based on that information (and any additional information relating to the application requested by Customs), and the applicant's record of transactions with Customs, Customs would approve or deny the application. Criteria for Customs action, including the presence or absence of unresolved Customs charges, the accuracy of the claimant's past claims, and whether any previously approved

drawback privilege was revoked or suspended, are specifically set forth in the proposed regulation.

If an applicant is approved for accelerated payment of drawback, the applicant would be required to furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond, subject to increase if the amount of the bond is exceeded. Drawback claims for which accelerated payment of drawback was requested and approved would be certified for payment within 3 weeks after filing, if a component for electronic filing of drawback claims, records, or entries which has been implemented under the National Customs Automation Program (NCAP) (19 U.S.C. 1411 - 1414) is used, and within 3 months after filing otherwise. In regard to electronic filing of drawback claims, currently procedures exist for electronic filing of certain "coding sheet" data as a part of drawback claims. The agency is working on the development of the drawback components under NCAP, in accordance with its responsibilities under the cited statutory provisions. It is anticipated that by the effective date of a Final Rule, a component for electronic filing under NCAP will have been properly implemented so that participants will be able to take advantage of the 3-week time period in the proposed regulations.

As is true of waiver of prior notice (see above), approval of the accelerated payment drawback privilege would be conditioned from the outset on the agency's right to immediately

stay operation of that privilege, for a specified reasonable period, should the agency desire for any reason to examine compliance with the drawback law and regulations for purposes of verification. Claims filed in the absence of a privilege, or during the effect of a stay, would be paid in the normal manner - upon liquidation of the associated drawback entry(ies). However, if an accelerated payment privilege is granted, or reactivated after a stay, payment could proceed according to such privilege notwithstanding that the claim was filed in absence of such privilege or during a stay.

Harmonized Tariff Schedule Or Schedule B Numbers

A fundamental requirement for drawback is that there be a duty-paid importation and an exportation and that the claimant have evidence to prove each. Under the laws and regulations governing dutiable entries for consumption (see 19 U.S.C. 1484, 1498 and 19 CFR parts 141, 142, and 143), the tariff classification is required from the importer of record of the merchandise. Such tariff classification is required to be shown on the entry summary and other documentation, including the invoice for the merchandise (19 CFR 141.61(e), 19 CFR 141.90(b)). Under 19 CFR 141.61(e), the statistical reporting number required by the General Statistical Notes (GSN’s) of the Harmonized Tariff Schedule of the United States (HTSUS) (10-digit number, see GSN 3), is required to be shown on the entry summary and other entry

documentation. These documents (i.e., entry summaries and other entry documentation, such as invoices) comprise evidence which is used to establish duty-paid importation of imported merchandise for drawback purposes.

The correct commodity number from Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, is required by the Census Bureau to be provided for exported merchandise. This Schedule B commodity number is required to be entered in the space provided on the Shipper's Export Declaration (SED) form (15 CFR 30.7(l)) (for most exports to Canada, no SED is required (see 15 CFR 30.58; see also Department of Commerce Final Rule published in the **Federal Register** on November 30, 1990 (55 FR 49613))). Under GSN 5 of the HTSUS, as well as in the "Notice to Exporters" following GSN 5 of the HTSUS, the HTSUS statistical reporting numbers referred to in the preceding paragraph may, with certain exceptions, be substituted on the SED in place of comparable Schedule B numbers. The SED, with other documentation, comprises evidence which is used to establish exportation for drawback purposes.

In regard to imports, the proposed regulations would require claimants to provide on all drawback claims they submit the HTSUS number, to the six-digit level, for the designated imported merchandise. When such claimants are importers of record, the HTSUS number would be provided from the entry summary(s) and

other entry documentation under which the merchandise originally entered the country. When such claimants are not importers of record (and thus would have received a Certificate of Delivery or a Certificate of Manufacture and Delivery for the imported merchandise (or substituted merchandise in certain cases; see below)), the HTSUS number would be provided from such Certificate (see below).

Also in regard to imports, the proposed regulations would require importers of record and any other party(ies) preparing Certificates of Delivery and Certificates of Manufacture and Delivery to provide the HTSUS number for the imported merchandise, to the six-digit level, on such Certificates. Any intermediate party(ies) receiving merchandise on a Certificate of Delivery would be required to transfer it to another party using such a Certificate. If the party preparing the Certificates is the importer of record, the HTSUS number would be from the entry summary(s) and other entry documentation under which the merchandise originally entered the country. If the party preparing the Certificates is another party (e.g., an intermediate party), the HTSUS number would be from the Certificate on which that party received the merchandise, and thus ultimately be derived from the entry summary(s) and other entry documentation.

The requirement for the HTSUS number on the Certificates of Delivery and Certificates of Manufacture and Delivery is

necessary because, under the proposed regulations, these Certificates would no longer be part of the drawback entry form, as is currently true. In the case of Certificates of Delivery, those Certificates will not be filed with a claim; they will be required to be in the possession of the claimant at the time that a claim is filed. Therefore, for Certificates of Delivery, the HTSUS number must be on both the Certificates and the claim (so that the claim preparer can derive the HTSUS number, ultimately, from the entry summary(s) and other entry documentation and so that that HTSUS number is on the drawback claim filed with Customs). In the case of Certificates of Manufacture and Delivery, such Certificates are required to be filed with a claim or to have been previously filed with Customs and are necessary parts of a complete claim. Therefore, providing the HTSUS number on the Certificates, if a claim is based on such certificates, satisfies the requirement for providing the HTSUS number on the claim (i.e., if a claim is based on Certificate(s) of Manufacture and Delivery filed with the claim or previously filed with Customs, the HTSUS number need only be on the Certificate(s) and not the drawback entry form).

In addition, in the case of the transfer of merchandise substituted for the imported merchandise under 19 U.S.C. 1313(j)(2) or 19 U.S.C. 1313(p), the proposed regulations would require the claim and any Certificate of Delivery or Certificate of Manufacture and Delivery (see above) to bear the tariff

numbers, to the six-digit level, for the substituted merchandise. This additional information proposed to be required for substituted merchandise is necessary to establish compliance with the drawback statute (i.e., either as one of the criteria to establish commercial interchangeability for purposes of § 1313(j)(2), see House Report No. 103-361, supra, page 131, and Senate Report No. 103-189, supra, page 83, or to establish same kind and quality for purposes of § 1313(p), per the explicit language in that subsection itself).

In regard to exports, the proposed regulations would require all drawback claimants to provide on all drawback claims they submit the Schedule B numbers, or HTSUS numbers substituted therefor, for the exported merchandise or articles upon which the claims are based. These numbers would be provided from the SED(s) for such exported merchandise or articles, when an SED is required. If no SED is required (e.g., for certain exports to Canada (15 CFR 30.58)), the claimant is required to provide the Schedule B commodity number(s) or HTSUS number(s), to the 6-digit level, that the exporter would have set forth on the SED, but for the exemption from the requirement for an SED.

Consistent with the stated intent of both the House Committee on Ways and Means and the Senate Committee on Finance, although the amended drawback law will allow claimants to make greater use of drawback, Customs will be able to ensure greater compliance through the use of enhanced penalty and automated

drawback selectively programs authorized elsewhere in the NAFTA Implementation Act (see 19 U.S.C. 1593a, and its legislative history in House Report No. 103-361, supra, page 130, and Senate Report No. 103-189, supra, page 81). Customs intends the above-described proposed requirements, incorporating already required HTSUS and Schedule B commodity numbers into the drawback claim itself, to directly serve those specified means for achieving greater compliance. More generally, the above-described proposed requirements also serve the basic automation goals behind Title VI (Customs Modernization) of the NAFTA Implementation Act. These proposed requirements will result in numerical descriptions of merchandise or articles instead of narrative descriptions, which are far more amenable to electronic processing and automation. That is, since HTSUS and commodity numbers are the basic terms of reference for imports and exports of merchandise, inclusion of this information in drawback claims is necessary for Customs to be able to offer the enhanced electronic processing, uniformity, and automation Congress intended (see, House Report No. 103-361, supra, pages 106-107; Senate Report No. 103-189, supra, pages 63-64).

For imports, the proposed requirement will go into effect for merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the regulations. For exports, the proposed requirement will go into effect for exported merchandise or articles exported one year after the

effective date of the regulations.

Procedures to Evidence Exportation

It is the obligation of the claimant to have adequate evidence of export to support his drawback claim. There may be cases where the consignee shown on the bill of lading is not the ultimate consignee, or where, to retain commercial confidentiality, the identity of the ultimate consignee is not known to the claimant. The current practice in such a situation is for the exporter to either cut out or blank out the name of the ultimate consignee from the proof of export submitted to the claimant.

As noted above in this background, under "Privileges", the Exporter's Summary Procedure (ESP) would no longer be a special privilege, but would be available to all claimants as an option for establishing exportation. It is proposed to revise the current subpart regarding evidence of exportation (subpart E) accordingly. That is, the proposed regulations would list the alternative procedures for establishing exportation (actual evidence of exportation, export summary, certified export invoice for mail shipments, notice of lading for supplies for certain vessels or aircraft, and notice of transfer for articles manufactured or produced in the United States which are transferred to a foreign trade zone). The actual evidence of exportation alternative is modified to make it clear that the

documentary evidence listed therein consists of originals of the listed documents, or certified copies thereof (the current regulations omit the word "original"). In addition, the "Chronological Summary of Exports", provided for in the ESP regulations, is proposed to be simplified to list only necessary information (date of export, unique export identifier (explained in a footnote) description, net quantity, Schedule B number or HTSUS number (see discussion of Harmonized Tariff Schedule or Schedule B Numbers in this background), and destination).

Selectivity

The U.S. Customs Service has had an electronic selectivity program in operation for its National Drawback Program since 1994. The present system is a random statistical sampling whose methodology is based on the drawback claimant's overall history with Customs. This selectivity system will be further expanded in late 1996 to become a two-tier system whereby rules and criteria elements such as tariff classification numbers of the subject merchandise and articles, import and export locations, etc., would be used to evaluate risk and designate the level of Customs review of the claim. After this initial review, a random statistical targeting based on the claimant and the claimant's overall history with Customs would also be run (see Item 4 under discussion of liquidation, below).

Drawback Compliance Program

The drawback compliance program is designed to allow Customs to review claims in a post audit mode on an account basis rather than transaction by transaction. Any person, corporation or business may be certified as a participant in the drawback compliance program. Under 19 U.S.C. 1593a(e), claimants and other parties in interest may participate. A "party" is considered to include any person or company who is involved in providing data on which a drawback claim may be based or who is the drawback claimant. This would include importers, intermediary parties and drawback claimants. Therefore, any party that provides information or documentation to one who intends to file a drawback claim is encouraged to participate in the drawback compliance program.

Customs will be publishing another regulatory package in the **Federal Register** concerning penalties. That package, which will be subject to public comment, will set forth mitigation guidelines.

In evaluating a drawback compliance application package, Customs will consider the following factors:

-Size of the company;

-Nature of the business;

-Type of drawback claims being filed;

-Number of claims being filed.

In addition, depending on the complexity of the applicant's

actual drawback program, Customs may request additional information or details before making its decision.

It is anticipated that the initial number of requests will make it difficult to approve applicants within a specified time period.

For corporations that have various business units and divisions, are decentralized or use several brokers to administer all or part of their drawback program, each entity may apply separately for the drawback compliance program.

Identification By Accounting Methods

For those situations in which the statute does not allow substitution of merchandise or articles (see above), and in which a company is not able to specifically identify merchandise or articles (e.g., by serial number), accounting methods may be used to determine the identity thereof. Such identification may be made on the basis of a company's records, rather than on the basis of the actual physical movement of the inventory. Previous regulations and rulings required that merchandise or articles be commingled in the same inventory location in order for a company to use an accounting method to identify the merchandise or articles. The proposed regulations clarify that such commingling is allowed, but not mandated, and that a company's records will be the determining factor in the employment of an accounting method.

Four accounting methods are approved for use in the proposed revision of part 191: first-in, first-out (FIFO), last-in, first-out (LIFO), low-to-high, and weighted average. Provision is also made for Customs to approve either a modification of one of these methods, or a different method. These proposed regulations reflect Customs position that a properly established turn-over period may be used to establish timely use in manufacture or production of the imported designated and other (substituted) merchandise under 19 U.S.C. 1313(b), and the manufacture or production of the finished articles under 19 U.S.C. 1313(a) and (b). These proposed regulations also incorporate the criteria set forth in T.D. 95-61, 60 Fed. Reg. 40995 (August 11, 1995), and are designed to provide a greater degree of predictability in the accounting methods that may be approved for drawback purposes.

Recordkeeping

Records are required to be kept to establish compliance with the requirements in the drawback law and the regulations issued under that law. Individual records are identified and described in the proposed revision of part 191 at the point where the requirements underlying those records are found.

Records supporting the information contained in any document required for filing a drawback claim would have to be maintained by the claimant or by the responsible party (e.g., importer,

exporter, possessor). If deficiencies are revealed in the underlying records on which a drawback claim is based, the payment of the claim would, of course, to this extent be adversely affected, notwithstanding that such records were generated and maintained by persons other than the claimant. Regarding the retention period for records kept by parties other than the claimant, it is the responsibility of such parties to communicate with the claimant to determine when a related claim for drawback has been filed and paid by Customs. The retention period for certificates of delivery begins upon their issuance (19 U.S.C. 1313(t)). In addition, the retention period for records generally, including that for certificates of delivery, ends 3 years after the date of payment of the related claim. Notwithstanding the recordkeeping retention requirements, claimants are urged to maintain records that support the claim until the liquidation of the drawback entry becomes final. Moreover, records not specifically subject to recordkeeping retention which are maintained by a claimant, and support a claim, ought to be maintained until the liquidation of the drawback entry becomes final.

Redistribution of Drawback Workload

Customs may transfer drawback claims to a location other than where they were originally filed to ensure the timely and efficient processing of the claims. This would occur primarily

to evenly distribute the drawback claims or because an office has a particular expertise with a specific account or product. Customs believes that this is an internal Customs work management issue which does not require regulatory action. Therefore, the proposed regulations do not address this issue. However, Customs recognizes the public's concerns over the possibility of lost documentation or delays in processing. Customs will develop procedures to safeguard documents that are mailed and to monitor the time to process them. Customs believes that, until a fully-developed selectivity system and compliance program are operating, quicker, more efficient and more accurate processing of drawback claims will be the result of transferring claims among offices. If a claim is transferred for processing, the notice of liquidation of the associated drawback entry will remain the bulletin notice of liquidation posted at the port where the drawback claim was originally filed.

Liquidation of Drawback Entries

The committee reports of both the Senate and House commented on their expectation that Customs drawback regulations will take into account the various time frames for recordkeeping, filing claims, amendments, and clarifications, and for auditing and liquidating drawback entries. Customs believes that these proposed regulations have addressed many of the Committees' concerns, specifically in proposed §§ 191.25, 191.26, 191.37,

191.51, 191.52, 191.53, 191.61, and 191.62. These proposed regulations do not, however, specify a time frame for liquidating drawback entries. This is because Customs believes that, absent statutory language such as the "deemed liquidated" language of 19 U.S.C. 1504, it lacks the authority to specify a deadline after which the drawback entry is "deemed liquidated" as entered.

Customs is aware of the Congressional and trade interest in shortening the time between the filing of a drawback entry and the liquidation of that entry. Customs is pursuing the following actions in order to reduce the time in which to liquidate drawback entries:

1. Customs has established 11 new positions and filled vacancies in all 8 drawback offices in order to bring them up to their designated staffing levels;

2. Customs has developed and delivered standardized, national training to all drawback specialists (not just the new specialists) in FYs '95 and '96;

3. Customs has developed automated tools (initially, diskette filings and ABI transmission of drawback claims) to more quickly identify, reject and return to filers claims that do not meet minimum filing standards.

4. Customs has developed and is improving a selectivity system in ACS which already has reduced the number of designated import entries that must be physically retrieved by the drawback office, prior to liquidation of related drawback entries.

Enhancements to this system will eventually lead to virtual "instant liquidation" of those drawback entries not selected by the system for pre-liquidation scrutiny by the drawback specialists.

5. Through the Drawback Compliance Program, and increased use of claimant interviews and visits for claimants not in the Drawback Compliance Program, Customs expects to inform drawback claimants of their responsibilities with respect to filing and supporting their claims as well as to learn about claimants' drawback programs, recordkeeping, and internal controls. In the past, when drawback specialists questioned the claims, or sought evidence to support the claim, they often relied upon Regulatory Audit. With better staffing and training, as well as use of interviews with claimants, Customs expects that the number of referrals to Regulatory Audit will significantly decrease.

6. In partnership with trade groups, Customs plans to use meetings, conferences, publications, satellite meetings and other forums, to educate and to learn from claimants.

7. The largest single reason for the delays in liquidating drawback entries is that the designated import entry has not been liquidated. Approximately 75% of entries withheld from liquidation are because of suspensions under the antidumping or countervailing duty laws; however, antidumping and countervailing duties are not subject to drawback. In recognition of this,

Customs announced in the **Federal Register** on May 17, 1996, a pilot of the reconciliation process provided for in 19 U.S.C. 1484(b) (as amended by § 637 of the NAFTA Implementation Act) for entry summaries suspended under the antidumping or countervailing duty laws. The use of the reconciliation entry process will allow for the liquidation of the ordinary duty on these entry summaries, thereby expediting the liquidation of the drawback entries referencing those import entries.

Customs believes that these actions, taken together, will bring about faster liquidation of drawback entries, thereby addressing the Congress's concerns.

COMMENTS

Customs has consulted extensively with the drawback community/trade in formulating these proposed regulations. Three drafts of the proposed regulations were made available to the public through Customs Automated Broker Interface (ABI) and the Customs Electronic Bulletin Board. Copies were also sent out to interested persons upon request. Additionally, since January 1992, Customs met 42 times with various groups representing drawback claimants, exporters, brokers, attorneys, and consultants to explain and discuss its proposals. In the summer of 1995, the trade expressed its continuing dissatisfaction with the modifications Customs had made based upon comments to those earlier drafts.

At the request of the American Association of Exporters and Importers, Customs agreed to continue these informal rulemaking consultations with trade groups in a series of meetings. These meetings were a continuation of the previous informal consultations with the trade. They were not a negotiation, mediation or a formal rulemaking procedure as provided for in the Negotiated Rulemaking Act of 1990 (Public Law 101-648, codified at 5 U.S.C. 561 et seq.). Other groups that participated in these meetings were the National Council on International Trade Development, the National Customs Brokers and Forwarders Association of America, and the American Petroleum Institute. The Customs participants represented the Trade Compliance program managers at Headquarters, the Office of Regulations and Rulings, field drawback offices, and Regulatory Audit. In view of concerns regarding Customs obligations under the Chief Financial Officer Act of 1990 (Public Law 101-576), representatives of the Treasury Inspector General and the Customs Office of Financial Management also participated. In addition, comments and recommendations from the public, the trade and Customs drawback offices were considered in this process.

These proposed regulations are subject to the requirements of the Administrative Procedures Act (5 U.S.C. 553), which requires Customs to give notice and afford interested persons the opportunity to comment on the proposed rules. Therefore, before adopting this proposal, full consideration will be given to any

written comments (preferably in triplicate) that are timely submitted to Customs. The comments submitted will receive full consideration and only Customs staff will prepare the analysis of the comments submitted in response to this notice of proposed rulemaking.

In view of Customs extensive consultation with groups of interested persons, Customs believes that a 60-day comment period is adequate for review and comment by all interested parties. Interested persons are encouraged to file their comments within the 60-day period.

All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The proposed rule would amend the Customs drawback regulations principally to reflect changes to the law occasioned by the Customs modernization portion of the NAFTA Implementation Act. The proposed rule also makes certain administrative changes to the existing regulations which are essentially intended to

simplify and expedite the filing and processing of claims for the payment of drawback, and it generally revises and rearranges these regulations to improve their editorial clarity. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. Thus, it is not subject to the requirements of 5 U.S.C. 603 or 604, nor would it result in a "significant regulatory action" under E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

The collection of information in this document is in §§ 191.0 - 191.195. This information is necessary and will be used to enforce the requirements of the drawback law and protect the revenue. The likely respondents and/or recordkeepers are business and other for-profit institutions.

Estimated annual reporting and/or recordkeeping burden: 216,650 hours.

Estimated average annual burden per respondent/recordkeeper: One hour for providing Harmonized Tariff Schedule numbers; 60 hours for Drawback Compliance Program participation.

Estimated number of respondents and/or recordkeepers: 7,000.

Estimated annual frequency of responses: On occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

PARALLEL REFERENCE TABLE

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191.]

Revised section	Old section
191.0	191.0.
191.0a	New.
191.1	191.1.
191.2(a)	191.2(p).
191.2(b)	New.
191.2(c)	New.
191.2(d)	New.
191.2(e)	New.
191.2(f)	191.2(b).
191.2(g)	New.
191.2(h)	191.2(j).
191.2(i)	191.2(a).
191.2(j)	191.2(i).
191.2(k)	191.2(h).
191.2(l)	191.2(g).
191.2(m)	New.
191.2(n)	191.2(l).

191.2(o).....191.2(f).

191.2(p).....New.

191.2(q).....New.

191.2(r).....New.

191.2(s).....191.2(m).

191.2(t).....191.2(n).

191.2(u).....191.2(e).

191.2(v).....191.2(o).

191.3.....191.3.

191.4.....191.11.

191.5.....191.13.

191.6.....191.6.

191.7(a).....191.41.

191.7(b)(1).....191.42(a).

191.7(b)(2).....191.42(b).

191.7(c).....191.43.

191.7(d).....191.44

191.8(a).....191.21(a).

191.8(b).....191.21(c).

191.8(c).....191.21(b).

191.8(d).....191.21(d); 191.23(a).

191.8(e).....191.23(b).

191.8(f).....191.24.

191.8(g)(1).....191.25(a)&(b)(1).

191.8(g)(2).....191.25(b)(2).

191.8(g)(3).....191.25(c).

191.8(h).....191.26.

191.9.....191.21(a)(2); 191.34; 191.66(b), (f).

191.9(a), first sentence.....New.

191.10(a).....191.65(a).

191.10(b).....191.22(e).

191.10(c)(1).....191.65(b).

191.10(c)(2).....191.66(d).

191.10(d).....191.5; 191.22(e).

191.10(e).....New.

191.10(f).....191.65(d).

191.11.....191.27.

191.12.....New.

191.13.....191.4(a)(11).

191.14.....191.22(c).

191.21.....191.4(a)(1).

191.22(a).....191.4(a)(2).

191.22(b).....191.32(c).

191.22(c).....191.32(d).

191.22(d).....New.

191.22(e).....191.22(a)(5) & 191.33.

191.23(a)-(c).....New.

191.23(d)(1).....191.22(a)(2) & 191.32(b).

191.23(d)(2).....191.22(a)(1)(iv).

191.24(a).....191.66(a).

191.24(b).....New.

191.24(c).....191.22(a)(4); 191.62(a)(2)(i).

191.24(d).....New.

191.25(a)(1).....191.22(a)(1).

191.25(a)(1)(iii).....191.22(a)(3).

191.25(a)(2).....191.22(b).

191.25(a)(3).....191.22(c).

191.25(b).....191.32(a).

191.25(c).....191.22(a)(2) & 191.32(b).

191.25(d).....191.62(a)(2)(ii).

191.25(e).....191.65(a)&(b).

191.25(f).....191.62(c).

191.25(g).....191.5.

191.26(a).....191.8(a); 191.22(a)(1)(v).

191.26(b).....191.32(a).

191.26(c).....191.23(c).

191.27.....New.

191.31(a).....191.4(a)(9); 191.141(a)(1).

191.31(b).....191.8(b); 191.141(a)(2).

191.31(c)..... 191.141(a)(3).

191.32(a).....191.141(a)(10).

191.32(b).....191.141(h).

191.32(c).....New.

191.32(d).....191.141(h).

191.32(e)&(f).....New.

191.33.....New.

191.34(a).....191.65(a); 191.141(b) & (e).

191.34(b).....New.

191.34(c).....191.65(d).

191.35.....191.141(b).

191.36.....New.

191.37(a).....191.5

191.37(b).....191.22(b).

191.41.....191.142(a)(1).

191.42.....191.142(b).

191.43.....191.142(a)(2).

191.44.....New.

191.51(a).....191.62(a)&(b).

191.51(b), (c) & (d).....New.

191.52(a).....191.61.

191.52(b) & (c).....191.64.

191.61.....191.10.

191.62(a).....191.9.

191.62(b).....New.

191.71.....191.141(f).

191.72.....191.51.

191.73.....191.53.

191.74.....191.54.

191.75.....191.55.

191.76.....191.67.

191.81.....191.71.

191.82.....191.73(a).

191.83.....191.73(b).

191.84.....191.7.

191.91.....191.141(b)(2)(ii).

191.92.....191.72.

191.93.....New.

191.101.....191.81.

191.102.....191.82.

191.103.....191.83.

191.104.....191.84.

191.105.....191.85.

191.106.....191.86.

191.111.....191.91.

191.112.....191.92; 191.93.

191.121.....191.101.

191.122.....191.102.

191.123.....191.103.

191.131.....191.111.

191.132.....191.112.

191.133.....191.113.

191.141.....191.121.

191.142.....191.122.

191.143.....191.123.

191.144.....191.124.

191.151.....191.131.

191.151(a)(1).....191.8(c).

191.152.....191.132.

191.153.....191.133.

191.154.....191.134.

191.155.....191.135.

191.156.....191.136.

191.157.....191.137.

191.158.....191.138.

191.159.....191.139.

191.161.....191.151.

191.162.....191.152.

191.163.....191.153.

191.164.....191.154.

191.165.....191.155.

191.166.....191.156.

191.167.....191.157.

191.168.....191.158.

191.171.....New.

191.172.....New.

191.173.....New.

191.174.....New.

191.175.....New.

191.176.....New.

191.181.....191.161.

191.182.....191.162.

191.183.....191.163.

191.184.....191.164.

191.185.....191.165.

191.186.....191.166.

191.191.....New.

191.192.....New.

191.193.....New.

191.194.....New.

191.195.....New.

Parallel Reference Table

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191.]

Old section	Revised section
191.0	191.0.
191.1	191.1.
191.2(a)	191.2(i).
191.2(b)	191.2(f).
191.2(c)	Deleted.
191.2(d)	Deleted.
191.2(e)	191.2(u).
191.2(f)	191.2(o).
191.2(g)	191.2(l).
191.2(h)	191.2(k).

191.2(i).....191.2(j).

191.2(j).....191.2(h).

191.2(k).....Deleted.

191.2(l).....191.2(n).

191.2(m).....191.2(s).

191.2(n).....191.2(t).

191.2(o).....191.2(v).

191.2(p).....191.2(a).

191.3.....191.3

191.4(a)(1).....191.21.

191.4(a)(2).....191.22(a).

191.4(a)(3)-(8).....Deleted.

191.4(a)(9).....191.31(a).

191.4(a)(10).....191.32(a).

191.4(a)(11).....191.13.

191.4(a)(12)-(14).....Deleted.

191.4(b).....Deleted.

191.5.....191.10(d); 191.25(g); 191.37(a).

191.6.....191.6.

191.7.....191.84.

191.8(a).....191.26(a).

191.8(b).....191.31(b).

191.8(c).....191.151(a)(1).

191.9.....191.62(a).

191.10.....191.61.

191.11.....191.4.

191.12.....Deleted.

191.13.....191.5.

191.21(a).....191.8(a).

191.21(a)(1).....Deleted.

191.21(a)(2).....191.9.

191.21(b).....191.8(c).

191.21(c).....191.8(b).

191.21(d).....191.8(d).

191.21(e).....Deleted.

191.22(a)(1).....191.25(a)(1).

191.22(a)(1)(iv).....191.23(d)(2).

191.22(a)(1)(v).....191.26(a).

191.22(a)(2).....191.23(d)(1); 191.25(c).

191.22(a)(3).....191.25(a)(1)(iii).

191.22(a)(4).....191.24(c).

191.22(a)(5).....191.22(e).

191.22(b).....191.25(a)(2).

191.22(c).....191.14.

191.22(d).....Deleted.

191.22(e).....191.10(b) & (d).

191.23(a).....191.8(d).

191.23(b).....191.8(e).

191.23(c).....191.26(c).

191.23(d).....Deleted.

191.24.....191.8(f).

191.25(a).....191.8(g)(1).

191.25(b)(1).....191.8(g)(1).

191.25(b)(2).....191.8(g)(2).

191.25(c).....191.8(g)(3).

191.26.....191.8(h).

191.27.....191.11.

191.31.....Deleted.

191.32(a).....191.25(b).

191.32(b).....191.25(c).

191.32(c).....191.22(b).

191.32(d).....191.22(c).

191.33.....191.22(e).

191.34.....191.9.

191.41.....191.7(a).

191.42(a).....191.7(b)(1).

191.42(b).....191.7(b)(2).

191.43.....191.7(c).

191.44.....191.7(d).

191.45.....Deleted.

191.51.....191.72.

191.52.....Deleted.

191.53.....191.73.

191.54.....191.74.

191.55.....191.75.

191.56.....Deleted.

191.57.....Deleted.

191.61.....191.52(a).

191.62(a).....191.51(a).

191.62(a)(2)(ii).....191.25(d).

191.62(b).....191.51(a).

191.62(c).....191.25(f).

191.62(d).....Deleted.

191.63.....Deleted.

191.64.....191.52(b) & (c).

191.65(a).....191.10(a); 191.25(e).

191.65(b).....191.10(c)(1); 191.25(e).

191.65(c).....Deleted.

191.65(d).....191.10(f); 191.34(c).

191.66(a).....191.24(a).

191.66(b).....191.9.

191.66(c).....Deleted.

191.66(d).....191.10(c)(2).

191.66(e).....Deleted.

191.66(f).....191.9.

191.67.....191.76.

191.71.....191.81.

191.72.....191.92.

191.73(a).....191.82.

191.73(b).....191.83.

191.81.....191.101.

191.82.....191.102.

191.83.....191.103.

191.84.....191.104.

191.85.....191.105.

191.86.....191.106.

191.91.....191.111.

191.92, 191.93.....191.112.

191.101.....191.121.

191.102.....191.122.

191.103.....191.123.

191.111.....191.131.

191.112.....191.132.

191.113.....191.133.

191.121.....191.141.

191.122.....191.142.

191.123.....191.143.

191.124.....191.144.

191.131.....191.151.

191.132.....191.152.

191.133.....191.153.

191.134.....191.154.

191.135.....191.155.

191.136.....191.156.

191.137.....191.157.

191.138.....191.158.

191.139.....191.159.

191.141(a)(1).....191.31(a).

191.141(a)(2).....191.31(b).

191.141(a)(3).....191.31(c).

191.141(b).....191.34(a); 191.35.

191.141(b)(2)(ii).....191.91.

191.141(c).....191.51.

191.141(d).....191.73.

191.141(e).....Deleted.

191.141(f).....191.71.

191.141(g).....191.51; 191.52.

191.141(h).....191.32(b) & (d).

191.142(a)(1).....191.41.

191.142(a)(2).....191.43.

191.142(b).....191.42.

191.151.....191.161.

191.152.....191.162.

191.153.....191.163.

191.154.....191.164.

191.155.....191.165.

191.156.....191.166.

191.157.....191.167.

191.158.....191.168.

191.161.....191.181.

LIST OF SUBJECTS

19 CFR PART 7

Customs duties and inspection, Exports, Imports.

19 CFR PART 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR PART 145

Customs duties and inspection, Imports, Postal Service.

19 CFR PART 173

Administrative practice and procedure, Customs duties and inspection.

19 CFR PART 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR PART 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and

recordkeeping requirements, Trade agreements (North American Free Trade Agreement).

19 CFR PART 191

Canada, Commerce, Customs duties and inspection, Drawback, Mexico, Reporting and recordkeeping requirements, Trade agreements.

PROPOSED AMENDMENTS

It is proposed to amend chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), by amending parts 7, 10, 145, 173, 174, 181 and 191 as set forth below.

PART 7 - CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The general authority for part 7 would be revised to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

2. It is proposed to amend § 7.1(a) by removing the reference to "§§ 191.85 and 191.86" where appearing therein, and by adding in place thereof, "§§ 191.105 and 191.106".

PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 would continue to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

2. It is proposed to amend § 10.38(f) by removing the reference to "§ 191.10" where appearing therein, and by adding in place thereof, "§ 191.61".

PART 145 - MAIL IMPORTATIONS

1. The general authority citation for part 145 would be revised to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

2. It is proposed to amend § 145.72(e) by removing the reference to "§ 191.142" where appearing therein, and by adding in place thereof, "§ 191.42".

PART 173 - ADMINISTRATIVE REVIEW IN GENERAL

1. The general authority citation for part 173 would continue to read as follows:

AUTHORITY: 19 U.S.C. 66, 1501, 1520, 1624.

2. It is proposed to amend § 173.4 by adding a sentence at the end of paragraph (c) to read as follows:

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

* * * * *

(c) * * * The party requesting reliquidation under section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)) shall state, to the best of his knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and 191.81(b) of this chapter).

* * * * *

PART 174 - PROTESTS

1. The general authority citation for part 174 would continue to read as follows:

AUTHORITY: 19 U.S.C. 66, 1514, 1515, 1624.

2. It is proposed to amend § 174.13 by adding a new paragraph (a)(9) to read as follows:

§ 174.13 Contents of protest.

(a) Contents, in general. * * *

(9) A declaration, to the best of the protestant's knowledge, as to whether the entry is the subject of drawback, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and § 191.81(b) of this chapter).

* * * * *

PART 181 - NORTH AMERICAN FREE TRADE AGREEMENT

1. The general authority citation for part 181 would continue to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

2. It is proposed to amend § 181.44(d) by removing the reference to "§ 191.2(m)" where appearing therein, and by adding in place thereof, "§ 191.2(s)".

3. It is proposed to amend the "Example" in § 181.44(f) by removing the reference to "Customs Form 7575-A" where appearing therein, and by adding in its place, "Customs Form 331".

4. It is proposed to amend § 181.45(b)(2)(i) by removing the reference to "§ 191.141(e)" where appearing therein, and by adding in place thereof, "§ 191.14".

5. It is proposed to amend § 181.46(b) by removing the term "port(s)" and where appearing in the first sentence, and adding in place thereof, "drawback office(s)".

6. It is proposed to amend § 181.47(b)(2)(i)(C) by removing the words "Exporter's" and "exporter's" where appearing therein, and by adding in place thereof, "Export" and "export", respectively.

7. It is proposed to amend § 181.47(b)(2)(ii)(A) by removing "Customs Form 7539J", and adding in place thereof,

"Customs Form 331".

8. It is proposed to amend § 181.47(b)(2)(ii)(D) by removing the phrase "The certificate of delivery portion of Customs Form 331" where appearing therein, and adding in place thereof, "A certificate of delivery".

9. It is proposed to amend § 181.47(b)(2)(ii)(G) by revising the first two sentences to read:

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Evidence of exportation. Acceptable documentary evidence of exportation to Canada or Mexico shall include a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier. ***

10. It is proposed to amend § 181.47(b)(2)(iii)(A) by removing "Customs Form 7539C" where appearing therein, and by adding in place thereof, "Customs Form 331".

11. It is proposed to amend § 181.47(b)(2)(v) by removing the reference to "subpart L" where appearing therein, and by adding in place thereof, "subpart N".

12. It is proposed to amend § 181.49 by removing the reference to "§ 191.5" where appearing therein, and by adding in place thereof, "§ 191.25(d)".

13. It is proposed to amend § 181.50(c) by removing the reference to "§ 191.72" where appearing therein, and by adding in place thereof, "191.92".

PART 191 - DRAWBACK

1. It is proposed to revise part 191 to read as follows:

Subpart F - Verification of Claims

Subpart G - Evidence of Exportation and Destruction

Subpart H - Liquidation and Protest of Drawback Entries

Subpart I - Privileges

Subpart J - Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured from Domestic Tax-Paid Alcohol

Subpart O - Merchandise Exported from Continuous Customs Custody

Subpart P - Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

Subpart Q - Substitution of Finished Petroleum Derivatives

Subpart R - Merchandise Transferred to a Foreign Trade Zone from Customs Custody

Subpart S - Drawback Compliance Program

Appendix B to part 191 - Sample Formats for Applications for Specific Manufacturing Drawback Rulings

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

§ 191.62 also issued under 18 U.S.C. 550, 19 U.S.C. 1593a;

§ 191.84 also issued under 19 U.S.C. 1514;

§§ 191.111, 191.112 also issued under 19 U.S.C. 1309;

§§ 191.151(a)(1), 191.153, 191.157, 191.159 also issued under 19 U.S.C. 1557;

§ 191.182 - 191.186 also issued under 19 U.S.C. 81c;

§§ 191.191 - 191.195 also issued under 19 U.S.C. 1593a.

§ 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

§ 191.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter shall be filed separately from claims filed under the provisions of this part.

Subpart A - General Provisions

§ 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D.

53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§ 191.2 Definitions.

For the purposes of this part:

(a) Abstract. "Abstract" means the summary of the actual production records of the manufacturer.

(b) Certificate of delivery. "Certificate of delivery" means Customs Form xxx summarizing information contained in original documents, establishing:

(1) The delivery of imported merchandise, substituted merchandise under 19 U.S.C. 1313(j)(2), or drawback product, from one party (transferor) to another (transferee); and

(2) The assignment of drawback rights for the merchandise transferred from the transferor to the transferee.

(c) Certificate of manufacture and delivery. "Certificate of manufacture and delivery" means Customs Form xxx summarizing information contained in original documents, establishing the manufacture or production of articles under 19 U.S.C. 1313(a) or (b). A certificate of manufacture and delivery must contain the information, and has the effect, set forth in § 191.24 of this part.

(d) Act. "Act", unless indicated otherwise, means the Tariff Act of 1930, as amended.

(e) Commercially interchangeable merchandise. "Commercially interchangeable merchandise" means merchandise which may be substituted under the substitution unused merchandise drawback law, § 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)) (see § 191.32(b)(2) of this part), or under the provision for the substitution of finished petroleum derivatives, § 313(p), as amended (19 U.S.C. 1313(p)).

(f) Designated merchandise. "Designated merchandise" means either eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

(g) Destruction. "Destruction" means the complete destruction of articles or merchandise to the extent that they have no commercial value.

(h) Direct identification drawback. "Direct identification drawback" means drawback authorized either under § 313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed, or under § 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under Customs supervision, without having been used in the United States (see also §§ 313(c), (e), (f), (g), (h), and (q)).

(i) Drawback. "Drawback" means the refund or remission, in

whole or in part, of a customs duty, fee or internal revenue tax which was imposed on imported merchandise under Federal law because of its importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d).

(j) Drawback claim. "Drawback claim" means the drawback entry and related documents required by regulation which together constitute the request for drawback payment.

(k) Drawback entry. "Drawback entry" means the document containing a description of, and other required information concerning, the exported or destroyed article on which drawback is claimed. Drawback entries are filed on Customs Form 331.

(l) Drawback product. A "drawback product" means a product which is finished, partially finished or wholly manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under Customs supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback would be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become "drawback products" when applicable substitution provisions of

the Act are met. For purposes of § 313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (see § 1313(b)). For a drawback product to be designated as the basis for drawback, the product must be associated with a certificate of manufacture and delivery (see § 191.24 of this part).

(m) Exportation. "Exportation" means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are used as aircraft or vessel supplies in accordance with § 309(b) of the Act, as amended (19 U.S.C. 1309(b)).

(n) Fungible merchandise or articles. "Fungible merchandise or articles" means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

(o) General manufacturing drawback ruling. A "general manufacturing drawback ruling" means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation which is published in Appendix A of this part. A manufacturer or producer whose operation is within this

description may operate under a particular "general manufacturing drawback ruling" by submitting to the appropriate drawback office a letter of notification of intent to operate under the general ruling, in accordance with § 191.7, after which Customs issues a letter of acknowledgment.

(p) Manufacture or production. "Manufacture or production" means:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive "name, character or use"; or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (p)(1) of this section.

(q) Possession. "Possession", for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

(r) Relative value. "Relative value" means the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by Customs, of each such product or by-product

determined as of the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback law requires the apportionment of drawback to each such product or by-product based on its relative value at the time of separation.

(s) Substituted merchandise. "Substituted merchandise" means same kind and quality merchandise that may be substituted under the substitution drawback provisions, either § 313(b) or 313(p) of the Act, as amended (19 U.S.C. 1313(b) or (p)). Under § 313(b), substituted merchandise is of the same kind and quality if it is capable of being used interchangeably in manufacture or production of exported or destroyed articles with no substantial change in the manufacturing or production process. Under § 313(p), as amended, an exported article and a qualified article are of the same kind and quality if they fall under the same 8-digit Harmonized Tariff Schedule of the United States (HTSUS) tariff classification as enumerated in § 313(p)(3)(A)(i)(I) or (II), as amended, or are commercially interchangeable (see § 191.2(e)). Under § 313(j)(2), substituted merchandise means merchandise which is commercially interchangeable with the imported designated merchandise.

(t) Schedule. A "schedule" means a document filed by a drawback claimant, under § 313(a) or (b), as amended (19 U.S.C.

1313(a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed for drawback.

(u) Specific manufacturing drawback ruling. A "specific manufacturing drawback ruling" means an application, in one of the formats published in Appendix B of this part, by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format used, together with a letter of approval issued by Customs Headquarters to the applicant in response to the application in accordance with § 191.8. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis being published under an identifying Treasury Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

(v) Verification. "Verification" means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate Customs officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

§ 191.3 Duties and fees subject or not subject to drawback.

(a) Duties subject to drawback include:

(1) All ordinary Customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final and for which the drawback claimant and any other party responsible for the payment of liquidated import duties have filed a written request and waiver under § 191.82(b) of this part;

(iii) Voluntary tenders of the unpaid amount of lawful duties on an entry, or withdrawal from warehouse, for consumption, provided that the import entry, or withdrawal from warehouse, for consumption for which the voluntary tender was made is specifically identified in the voluntary tender and provided that liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final and that the drawback claimant and any other party responsible for the payment of the voluntary tender have filed a written request and waiver under section 191.82(c) of this part; or

(iv) Any payment of duty for an import entry, or withdrawal from warehouse, for consumption, such as payment of a demand for duties under 19 U.S.C. 1592(d), provided that the

payment is specifically identified as duty on a specifically identified import entry, or withdrawal from warehouse, for consumption the liquidation of which became final prior to such payment, and provided that liquidation of the drawback entry in which that specifically identified entry, or withdrawal from warehouse, for consumption is designated has not become final and that the drawback claimant and any other party responsible for the other payments of duties have filed a written request and waiver under section 191.82(c) of this part;

(2) Marking duties assessed under § 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)); and,

(3) Internal revenue taxes which attach upon importation (see § 101.1(i) of this chapter).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance fee (see § 24.24 of this chapter);

(2) Merchandise processing fee (see § 24.23 of this chapter); and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

(c) No drawback shall be allowed when the designated imported merchandise, or the substituted other merchandise (when applicable), consists of an agricultural product to which an over-quota rate of duty established under a tariff-rate quota is

applicable, except that:

(1) Agricultural products as described in paragraph (c) of this section may be eligible for drawback under § 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)); and

(2) Tobacco otherwise meeting the description of agricultural products in paragraph (c) of this section may also be eligible for drawback under § 313(a) of the Act, as amended (19 U.S.C. 1313(a)).

§ 191.4 Merchandise in which a U.S. Government interest exists.

(a) Restricted meaning of Government. A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section. Surety on any drawback bond undertaken by these instrumentalities will not be required.

(b) Allowance of drawback. If the merchandise was sold to the U.S. Government, drawback shall be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 191.82 of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the department, branch, agency,

or instrumentality.

§ 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Under 19 U.S.C. 1313, drawback of Customs duty is not allowed on articles shipped to Puerto Rico, the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.6 Authority to sign drawback documents.

(a) Documents listed in paragraph (b) of this section shall be signed only by one of the following:

(1) The president, a vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of a business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed Customs broker with a power of attorney.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Certificates of delivery;

(3) Certificates of manufacture and delivery;

(4) Applications of manufacturers or producers for approval of specific manufacturing drawback rulings, schedules, and supplemental schedules;

(5) Letters of notification for general manufacturing drawback rulings;

(6) Endorsements of exporters on bills of lading or evidence of exportation; and

(7) Abstracts, schedules and extracts from monthly abstracts if not included as part of a drawback claim.

§ 191.7 General manufacturing drawback ruling.

(a) Purpose; eligibility. General manufacturing drawback rulings are designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing drawback rulings (see § 191.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of notification, and cannot operate under a

letter of notification submitted by the parent corporation.

(b) Procedures. (1) Publication. General manufacturing drawback rulings are contained in Appendix A to this part. The Appendix will be updated when new general drawback rulings are issued (as Treasury Decisions) or existing general drawback rulings are revised.

(2) Submission. Letters of notification of intent to operate under a general manufacturing drawback ruling shall be submitted in duplicate to any drawback office where drawback entries will be filed and liquidated. If claims are to be filed at more than one drawback office, two additional copies of the letter of notification shall be filed for each additional office and the drawback office with which the letter of notification is submitted shall forward the additional copies to such additional office(s).

(3) Information required. Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of producer or manufacturer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in § 191.6(a)(1) through (5) who will sign

drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Description of the merchandise and articles, unless specifically described in the letter of notification;

(v) Basis of claim used for calculating drawback; and

(vi) IRS (Internal Revenue Service) number of the manufacturer or producer.

(c) Acknowledgment. The appropriate drawback office shall acknowledge in writing the receipt of the letter of notification of intent to operate under the general manufacturing drawback ruling.

(d) Duration. Acknowledged letters of notification under this section shall remain in effect under the same terms as provided for in § 191.8(h) for specific manufacturing drawback rulings.

§ 191.8 Specific manufacturing drawback ruling.

(a) Proper applicant. Unless operating under a general manufacturing drawback ruling (see § 191.7), each manufacturer or producer of articles intended to be claimed for drawback shall apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary

is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) Sample application. Sample formats for applications for specific manufacturing drawback rulings are contained in Appendix B to this part.

(c) Content of application. The application of each manufacturer or producer shall include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise are used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in § 191.6(a)(1) through (5) who will sign drawback documents;

(6) Description of the imported merchandise including specifications;

(7) Description of the exported article;

(8) Basis of claim for calculating manufacturing drawback;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) Submission. An application for a specific manufacturing drawback ruling shall be submitted, in triplicate, to Customs Headquarters (Attention: Entry and Carrier Rulings Branch, Office of Regulations and Rulings). If drawback claims are to be filed under the ruling at more than one drawback office, two additional copies of the application shall be filed for each additional office.

(e) Review and action by Customs. Customs Headquarters shall review the application for a specific manufacturing drawback ruling.

(1) Approval. If consistent with the drawback law and regulations, Customs Headquarters shall issue a letter of approval to the applicant and shall forward 2 copies of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the letter of approval. Synopses of approved specific manufacturing drawback rulings shall be published in the weekly Customs Bulletin with each synopsis being published under an identifying Treasury Decision (T.D.). Each approved specific manufacturing drawback

ruling shall be assigned a unique computer-generated manufacturing contract number which appears in the published synopsis and must be used when filing manufacturing drawback claims with Customs.

(2) Disapproval. If not consistent with the drawback law and regulations, Customs Headquarters shall promptly inform the applicant that the application cannot be approved and shall specifically advise the applicant why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to Customs Headquarters (Attention: Director, International Trade Compliance Division).

(f) Schedules and supplemental schedules. When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule filed by the manufacturer or producer, the schedule will be reviewed by Customs Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) Procedure to modify a specific manufacturing drawback ruling. (1) Supplemental application. Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling shall submit a supplemental application for such a ruling in the form of the original

application to Customs Headquarters (Attention: Entry and Carrier Rulings Branch, Office of Regulations and Rulings). Except as specifically provided in this section, such modifications (not including those provided for in paragraph (g)(2) of this section) shall be subject to the procedures provided for in part 177 of this chapter.

(2) Limited modifications. (i) A supplemental application for a specific manufacturing drawback ruling shall be submitted to the drawback office(s) where claims are filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity; or

(E) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in

this paragraph, shall contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person (that is, such a modification need not be in the form of an original application, as under paragraph (g)(1) of this section).

(h) Duration. Subject to part 177 of this chapter, an approval of a specific manufacturing drawback ruling under this section shall remain in effect indefinitely unless:

(1) No drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with Customs Headquarters.

§ 191.9 Agency.

(a) Applicability. The principal-agent procedures described in paragraphs (b) through (e) of this section are applicable only in substitution manufacturing drawback under 19 U.S.C. 1313(b).

(b) General. An owner of the designated and substituted merchandise that is used to produce the exported articles may employ another person to do part, or all, of the work that transforms either the designated or substituted merchandise into

articles for the purpose of 19 U.S.C. 1313(b), or which accomplishes any of the other manufacture or production processes stated in § 191.2(p). The person who asserts that it is the manufacturer or producer under 19 U.S.C. 1313(b) must establish by its manufacturing records, the manufacturing records of its agent, or the manufacturing records of both parties, that the designated and substituted merchandise were used in the manufacture or production of articles.

(c) Requirements. (1) Contract. The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or substituted merchandise for the principal. The contract must specify:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) Ownership of the merchandise by the principal.

The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest for the purpose of 19 U.S.C. 1313(b).

(3) Sales prohibited. The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to show compliance with the requirement in 19 U.S.C. 1313(b) that the principal was the manufacturer or producer of the articles.

(d) Specific manufacturing drawback rulings; general manufacturing drawback rulings. (1) Owner. An owner who intends to show that it is the manufacturer or producer of articles under 19 U.S.C. 1313(b) through the work of an agent must state that intent in any application for a specific manufacturing drawback ruling filed under § 191.8.

(2) Agent. Each agent operating under this section must have filed a letter of notification for the general manufacturing drawback ruling (see § 191.7), for an agent, covering the articles manufactured or produced, or have obtained

a specific manufacturing drawback ruling (see § 191.8), as appropriate.

(e) Certificate of manufacture and delivery; drawback entry. (1) Agent. Each agent manufacturer conducting operations under this section shall furnish the principal for whom such agent processed merchandise a certificate of manufacture and delivery applicable to the operation so conducted, relating to the substituted or designated merchandise, and identifying the owner of the articles for whom processing was conducted. Certificates of Manufacture and Delivery issued to document the transfer of articles under this section do not assign the potential right to drawback to the person to whom such certificates are issued.

(2) Principal. The principal for whom processing was conducted under this section shall complete and file a drawback entry on Customs Form 331 and attach to it the forms from its agents or agent, if necessary (see §§ 191.10(e) and 191.24(c) of this part). The principal shall not complete a certificate of delivery for merchandise which it transfers to its agent(s) under the procedures in this section.

§ 191.10 Certificate of delivery.

(a) Purpose; when required. A party who: imports and pays duty on imported merchandise; receives imported merchandise; in the case of 19 U.S.C. 1313(j)(2), receives imported merchandise,

commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise; or receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b): may transfer such merchandise or manufactured article to another party. The party shall record this transfer by preparing and issuing in favor of such other party a certificate of delivery, certified by the importer or other party through whose possession the merchandise or manufactured article passed (see paragraph (c) of this section). A certificate of delivery issued with respect to the delivered merchandise or article:

(1) Documents the transfer of that merchandise or article;

(2) Identifies such merchandise or article as being that to which a potential right to drawback has attached; and

(3) Assigns such right to the transferee (see § 191.82 of this part).

(b) Required information. The certificate of delivery must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of delivery;

(3) Import entry number;

(4) Quantity delivered;

(5) Total duty paid on, or attributable to, the

delivered merchandise;

(6) Date certificate was issued;

(7) Date of importation;

(8) Port where import entry filed;

(9) Person from whom received; and

(10) Description of the merchandise delivered, and if such merchandise is the designated imported merchandise or merchandise substituted therefor under 19 U.S.C. 1313(j)(2) or 1313(p), the HTSUS number with a minimum of 6 digits. (For designated imported merchandise, such HTSUS number shall be from the entry summary and other entry documentation for the merchandise unless the issuer of the certificate of delivery received the merchandise under another certificate of delivery, in which case such HTSUS number shall be from the other certificate of delivery.)

(c) Intermediate transfer. (1) Imported merchandise. If the imported merchandise was not delivered directly from the importer to the manufacturer, or from the importer to the exporter (or destroyer), each intermediate transfer of the imported merchandise shall be documented by means of a certificate of delivery issued in favor of the receiving party, and certified by the person through whose possession the merchandise passed.

(2) Manufactured article. If the article manufactured or produced under 19 U.S.C. 1313(a) or (b) is not delivered

directly from the manufacturer to the exporter (or destroyer), each intermediate transfer of the article shall be documented by means of a certificate of delivery, issued in favor of the receiving party, and certified by the person through whose possession the article passed.

(d) Retention period; supporting records. Records supporting the information required on the certificate(s) of delivery, as listed in paragraph (b) of this section, must be retained by the issuing party for 3 years from the date of payment of the related claim.

(e) Submission to Customs; certification. The certificate of delivery shall be retained by the drawback claimant and, if requested, submitted to Customs as part of the claim. If the certificate is requested by Customs, but is not submitted as part of the claim, the drawback claim dependent on that certificate will be rejected (see § 191.52 of this part).

(f) Warehouse transfer and withdrawals. The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

§ 191.11 Tradeoff.

(a) Exchanged merchandise. To comply with §§ 191.21 and 191.22 of this part, the use of domestic merchandise taken in

exchange for imported merchandise of the same kind and quality (as defined in § 191.2(s) of this part for purposes of 19 U.S.C. 1313(b)) shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the transfer of the imported merchandise. This provision shall be known as tradeoff and is authorized by § 313(k) of the Act, as amended (19 U.S.C. 1313(k)).

(b) Requirements. Tradeoff must occur between two separate legal entities but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must consist of a straight tradeoff of same kind and quality merchandise, with no additional payments of any type, including additional payment in kind.

(c) Application. Each would-be user of tradeoff, except those operating under an approved specific manufacturing drawback ruling covering substitution, must apply to the Entry and Carrier Rulings Branch, Office of Regulations and Rulings, Customs Headquarters, for a determination of whether the imported and domestic merchandise are of the same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the drawback application. For those users manufacturing under direct identification drawback, the request should be made by a separate letter.

§ 191.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of § 313 of the Act, as amended (19 U.S.C. 1313) may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such other provision.

§ 191.13 Packaging Materials.

Drawback of duties is provided for in § 313(q) of the Act, as amended (19 U.S.C. 1313(q)), on imported packaging material when used to package or repackage merchandise or articles exported or destroyed pursuant to § 313(a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313(a), (b), (c), or (j)). Drawback is payable on the packaging material pursuant to the particular drawback provision to which the packaged goods themselves are subject. The drawback will be based on the duty, tax or fee paid on the importation of the packaging material. The packaging material must be separately identified on the claim.

§ 191.14 Identification of merchandise or articles by accounting method.

(a) General. This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as

identification of merchandise used in manufacture. This section is not applicable to situations in which the drawback law authorizes substitution (see 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p)). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution. This section is not applicable to the identification of merchandise by accounting procedures for drawback under 19 U.S.C. 1313(j)(1) for exportations to Canada or Mexico under the NAFTA (see § 181.45(b)(2)).

(b) Conditions and criteria for identification by accounting method. Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible (see § 191.2(n) of this part);

(2) The person using the identification method must establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn at different geographical locations, if such inventory records treat

receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the ordinary course of business) treat receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section (see, for example, paragraph (c)(5) of this section) or specifically approved by Customs (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by Customs (see § 191.61 of this part). If Customs requests such verification, the person using the identification method must be

able to demonstrate how, under generally accepted accounting procedures, the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used without variation with other methods for a period of at least one year, unless approval is given by Customs for a shorter period.

(c) Approved accounting methods. The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section.

(1) First-in, first-out (FIFO). The FIFO method is the method by which fungible merchandise or articles are identified on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(2) Last-in, first out (LIFO). The LIFO method is the method by which fungible merchandise or articles are identified on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise or articles in the inventory at the time of withdrawal.

(3) Low-to-high.

(i) General. The low-to-high method is the method by which fungible merchandise or articles are identified on the basis of the lowest drawback amount per unit of the merchandise or articles received into the inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then that with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. This method may be used without accounting for domestic withdrawals. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for unused merchandise drawback) before the claimed export, no drawback could be granted).

(ii) Use with inventory turn-over period. The low-to-high method may be used with an established inventory turn-over period, provided that:

(A) Merchandise or articles identified for drawback purposes under this method are the merchandise or

articles with the least amount of drawback attributable to them among the lots of merchandise or articles received into the inventory during the inventory turn-over period preceding the month in which the merchandise or articles identified were withdrawn; and

(B) The person establishes the average turnover period, as described in this paragraph. For purposes of this section, average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn. To establish an average of this time, at least 1 year, or three (3) turn-over periods (if inventory turns over less than 3 times per year), must be averaged. The inventory turn-over period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used. This method may be used without accounting for domestic withdrawals.

(iii) Examples.

(A) If the inventory contained 100 units with no drawback attributable to them, 100 units with $1 drawback attributable per unit, 100 units with $2 drawback attributable per unit, and the inventory turn-over method is not to be used,

withdrawals would be identified as follows: The first 100 units withdrawn would have no drawback attributable to them, the next 100 units withdrawn would have a drawback attribution of $1 per unit, and the third 100 units withdrawn would have a drawback attribution of $2 per unit. If 50 units were first withdrawn for non-drawback purposes and the next 250 units were withdrawn for drawback purposes, the 250-unit withdrawal would consist of 100 units with no drawback attributable, 100 units with $1 drawback attributable per unit, and 50 units with $2 drawback attributable per unit.

(B) If the average turn-over period for the merchandise or articles identified is 3 months, the inventory turn-over method is used, and the withdrawal is any date in September, the merchandise or articles with the lowest drawback attribution received into inventory in June, July, and August would be that identified.

(C) If the average turn-over period for the merchandise or articles identified is 3 months, the inventory turn-over method is used, the person using the identification method has more than one kind of merchandise or articles with different inventory turn-over periods the longest of which is 6 months, and the withdrawal is any date in September, the merchandise or articles with the lowest drawback attribution received into inventory in March, April, May, June, July, and August would be that identified.

(4) Average. The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation (by weighted averaging) of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. A person proposing to use this method should obtain a ruling from Customs (see 19 CFR part 177).

(5) Inventory turn-over for limited purposes. A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(ii)(B) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the imported designated merchandise and other (substituted) merchandise (see 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the finished articles (see 19 U.S.C. 1313(a) and (b)).

(d) Approval of other accounting methods.

(1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (see paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by Customs of the proposed accounting method under the provisions for obtaining an administrative ruling (see part 177 of this chapter). The conditions applied and the criteria

used by Customs in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by Customs for purposes of this section, it shall meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by both Customs and the person proposing the method.

Subpart B - Manufacturing Drawback

§ 191.21 Direct identification drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under Customs supervision, of articles which are not used in the United States prior to their exportation or destruction, and which are

manufactured or produced in the United States wholly or in part with the use of particular imported, duty-paid merchandise. Where two or more products result, drawback shall be distributed among the products in accordance with their relative value (see § 191.2(r)) at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in § 191.14 of this part.

§ 191.22 Substitution drawback.

(a) General. If imported, duty-paid, merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, then upon the exportation, or destruction under Customs supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in § 313(b) of the Act, as amended (19 U.S.C. 1313(b)), even though none of the imported, duty-paid merchandise may have been used in the manufacture or production of the exported or destroyed articles. The amount of drawback allowable cannot exceed that which would have been allowable had the merchandise used therein been the imported, duty-paid merchandise.

(b) Use by same manufacturer or producer at different

factory. Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 3 years after the date on which the material was received by the manufacturer or producer may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) Designation. A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) Designation by successor. (1) General rule. Upon compliance with the requirements in this section, a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) Drawback successor. A "drawback successor" is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor,

provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) Certifications and required evidence.

(i) Records of predecessor. The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) Merchandise not otherwise designated. The predecessor or successor must certify in an attachment to the claim, that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) Value of transferred property. In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) Review by Customs. The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3)(i) through (iii) of this section, must be

retained by the appropriate party(s) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

(e) By-products. (1) General. Where two or more products are produced concurrently in a substitution manufacturing operation, drawback shall be distributed to each product in accordance with its relative value (see § 191.2(r)) at the time of separation.

(2) Claims covering a manufacturing period. Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see § 191.2(r) of this part). Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(3) Recordkeeping. Records shall be maintained showing the relative value of each product at the time of separation.

§ 191.23 Methods of claiming drawback.

(a) Used in. Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when byproducts also necessarily and concurrently result from the

manufacturing process, and there is no valuable waste (see paragraph (c) of this section).

(b) Appearing in. Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. This method may not be used if there are byproducts also necessarily and concurrently resulting from the manufacturing process.

(c) Used in less valuable waste. Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when byproducts also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(d) Recordkeeping. (1) Valuable waste. When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer shall keep records to show the market value of the merchandise or drawback products used in manufacture or production, as well as the market value of the resulting waste (see § 191.2(r) of this part).

(2) If claim for waste is waived. If claim for waste is waived, only the "appearing in" basis may be used (see

paragraph (b) of this section). Waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

§ 191.24 Certificate of manufacture and delivery.

(a) When required. When the imported merchandise or drawback product undergoes some process of manufacture under a general manufacturing drawback ruling or a specific manufacturing drawback ruling, a certificate of manufacture and delivery shall be prepared and certified by the manufacturer. To assign drawback rights, see § 191.82 of this part.

(b) Information required on certificate. The following information shall be required on the certificate of manufacture and delivery executed by the manufacturer or producer:

(1) The quantity, kind and quality of imported, duty-paid merchandise or drawback product designated;

(2) Import entry numbers, HTSUS number to at least the 6th digit (such HTSUS number shall be from the entry summary and other entry documentation for the imported, duty-paid merchandise unless the issuer of the certificate of manufacture and delivery received the merchandise under another certificate (either of delivery or of manufacture and delivery), in which case such HTSUS number shall be from the other certificate), and applicable duty amounts, if applicable;

(3) Date received at factory, if applicable;

(4) Date used in manufacture, if applicable;

(5) Value at factory, if applicable;

(6) Quantity of waste, if any, if applicable;

(7) Market value of any waste, if applicable;

(8) Total quantity and description of merchandise appearing in or used;

(9) Total quantity and description of articles produced;

(10) Date of manufacture or production of the articles; and

(11) The quantity of articles transferred.

(c) Filing of certificate. The certificate of manufacture and delivery shall be filed with the drawback claim it supports (unless previously filed) (see § 191.51 of this part).

(d) Effect of certificate. A certificate of manufacture and delivery is used to document the physical delivery of articles from the manufacturer or producer to another party. A certificate of manufacture and delivery issued with respect to articles identifies such articles as being those to which a potential right to drawback has attached. Unless it is explicitly provided on the certificate of manufacture and delivery that potential drawback rights are not transferred by such certificate (for example, in the case of a principal-agency relationship under this part (see § 191.9)), a certificate of

manufacture and delivery assigns such potential rights to the transferee (see § 191.82 of this part).

§ 191.25 Recordkeeping for manufacturing drawback.

(a) Direct identification manufacturing. (1) Records required. Each manufacturer or producer under 19 U.S.C. 1313(a) shall keep records to allow the verifying Customs official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through production, to exportation or destruction. To this end, these records shall specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in or appearing in (see **§** 191.23) the articles manufactured or produced;

(iii) The quantity, if any, of the nondrawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the finished articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the completed articles were commingled after manufacture, their identity may be maintained in the manner prescribed in § 191.14 of this part.)

(2) Accounting. The merchandise and articles to be exported or destroyed shall be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the Customs official to verify, the applicable import entry, certificate of delivery, and/or certificate of manufacture and delivery associated with the claim; and

(ii) To identify with respect to that import entry, certificate of delivery, or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in manufacture or production.

(b) Substitution manufacturing. The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) shall establish the facts in

paragraph (a)(1)(i) - (vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of merchandise of the same kind and quality as the designated merchandise before its use to manufacture or produce (or appearance in) the exported articles; and

(3) That, within 3 years after receiving the designated merchandise at its plant, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period it manufactured or produced the exported or destroyed articles.

(c) Valuable waste records. When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer shall keep records to show the market value of the merchandise used, as well as the quantity and market value of the waste incurred (see § 191.2(r) of this part). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, shall be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles, reduced by the amount of merchandise which the value of the waste would replace.

(d) Purchase of manufactured articles for exportation. Where the claimant purchases articles from the manufacturer and exports them, the claimant shall file the related certificate of

manufacture and delivery as part of the claim (see § 191.51(a)(1) of this part).

(e) Delivery of imported merchandise to manufacturer. The claimant shall retain the certificate of delivery for any identified or designated import entry covering merchandise that was not imported by the manufacturer.

(f) Multiple claimants. (1) General. Multiple claimants may file for drawback with respect to the same export (for example, a chemical is exported in a container, where the chemical and the container have been produced by different manufacturers under drawback conditions).

(2) Procedures. (i) Submission of letter. Each drawback claimant shall file a separate letter, as part of the claim, describing the component article on the export bill of lading to which each claim will relate. Each letter shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component article. The exporter shall endorse the letters, as required, to show the respective interests of the claimants.

(ii) Blanket Waivers and Assignments of Drawback Rights. Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(iii) Use of export summary procedure. If the parties elect to use the export summary procedure, each drawback

claimant shall complete a chronological summary of exports for the respective component product to which each claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant(s) and the component product for which each will independently claim drawback. The exporter shall endorse the summaries, as required, to show the respective interests of the claimants. The claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback.

(g) Retention of records. All records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant shall be retained for 3 years after the date of payment of the related claims.

§ 191.26 Time limitations.

(a) Direct identification manufacturing. Drawback shall be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under Customs supervision within 5 years after importation of the merchandise identified to support the claim.

(b) Substitution manufacturing. Drawback shall be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture

or production within 3 years after receipt by the manufacturer or producer at its factory;

(2) Within the 3-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under Customs supervision within 5 years of the date of importation of the designated merchandise.

(c) Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged. Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 191.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 191.8), but no drawback shall be paid until such acknowledgement or approval, as appropriate.

§ 191.27 Person entitled to claim drawback.

The exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification shall also affirm that the exporter (or destroyer) has not and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to

any other party. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (destroyer).

Subpart C - Unused Merchandise Drawback

§ 191.31 Direct identification.

(a) General. Section 1313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law because of its importation, if the merchandise has not been used within the United States before such exportation or destruction.

(b) Time of exportation or destruction. Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported from the United States or destroyed under Customs supervision.

(c) Use. In general, for purposes of this section, merchandise is "used" when it is employed to perform the function for which it was intended (for example, shoes worn as footwear have been "used"). The performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the imported merchandise is not a use of that merchandise

for purposes of this section.

§ 191.32 Substitution drawback.

(a) General. Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback on merchandise which is commercially interchangeable with imported merchandise if the commercially interchangeable merchandise is exported, or destroyed under Customs supervision, within 3 years after the importation of the imported merchandise, and before such exportation or destruction, the commercially interchangeable merchandise is not used in the United States (see paragraph (e) of this section) and is in the possession of the party claiming drawback.

(b) Requirements. (1) The claimant must have possessed the substituted merchandise that was exported or destroyed, as provided in paragraph (d)(1) of this section;

(2) The substituted merchandise must be commercially interchangeable with the imported merchandise that is designated for drawback; and

(3) The substituted merchandise exported or destroyed must not have been used in the United States before its exportation or destruction (see paragraph (e) of this section).

(c) Determination of commercial interchangeability. In determining commercial interchangeability, factors to be considered include, but are not limited to, Governmental and

recognized industrial standards, part numbers, tariff classification and value. This determination can be obtained in one of three ways:

(1) A formal ruling from the Entry and Carrier Rulings Branch, Office of Regulations and Rulings;

(2) A nonbinding predetermination request sent directly to the appropriate drawback office; or

(3) A submission of all the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed.

(d) Time limitations. For substitution unused merchandise drawback:

(1) The claimant must have had possession of the exported or destroyed merchandise at some time during the 3-year period following the date of importation of the imported designated merchandise; and

(2) The merchandise to be exported or destroyed to qualify for drawback must be exported, or destroyed under Customs supervision, before the close of the 3-year period beginning on the date of importation of the imported designated merchandise.

(e) Use. In general, for purposes of this section, merchandise is "used" when it is employed to perform the function for which it was intended (for example, shoes worn as footwear have been "used"). The performing of any operation or combination of operations, not amounting to manufacture or

production under the provisions of the manufacturing drawback law, on the commercially interchangeable substituted merchandise is not a use of that merchandise for purposes of this section.

(f) Designation by successor. (1) General rule. Upon compliance with the requirements of this section, a drawback successor as defined in paragraph (f)(2) of this section may designate either of the following as the basis for drawback on merchandise possessed by the successor after the date of succession:

(i) Imported merchandise which the predecessor, before the date of succession, imported; or

(ii) Imported and/or commercially interchangeable merchandise which was transferred to the predecessor and for which the predecessor received, before the date of succession, a certificate of delivery from the person who imported and paid duty on the imported merchandise.

(2) Drawback successor. A "drawback successor" is an entity to which another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests

(realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) Certifications and required evidence.

(i) Records of predecessor. The predecessor or successor must certify in an attachment to the drawback claim that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the imported and/or commercially interchangeable merchandise.

(ii) Merchandise not otherwise designated. The predecessor or successor must certify in an attachment to the drawback claim, that the predecessor has not and will not designate, nor enable any other person to designate, the imported and/or commercially interchangeable merchandise as the basis for drawback.

(iii) Value of transferred property. In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) Review by Customs. The written agreement, merger, or corporate resolution, provided for in paragraph (f)(2) of this section, and the records and evidence provided for in

paragraph (f)(3)(i) through (iii) of this section, must be retained by the appropriate party(ies) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

§ 191.33 Person entitled to claim drawback.

(a) Direct identification. (1) Under 19 U.S.C. 1313(j)(1), the exporter (or destroyer) shall be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or any intermediate party. A drawback claimant under 19 U.S.C. 1313(j)(1) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see § 191.82 of this part). The claimant shall file such certification as part of the drawback claim.

(b) Substitution. (1) Under 19 U.S.C. 1313(j)(2), the following parties may claim drawback:

(i) In situations where the exporter or destroyer of the substituted merchandise is also the importer of the imported merchandise, that party shall be entitled to claim drawback.

(ii) In situations where the exporter or destroyer receives from the person who imported and paid the duty on the imported merchandise a certificate of delivery documenting the transfer of imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise, and exports such transferred merchandise, that exporter shall be entitled to claim drawback. (Any such transferred merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under § 1313(j)(2), and any retained merchandise will be treated as domestic merchandise.)

(iii) In situations where the transferred merchandise described in paragraph (b)(1)(ii) of this section is the subject of further transfer(s), such transfer(s) shall be documented by certificate(s) of delivery, and the exporter or destroyer shall be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or to any intermediate party, provided that the claimant had possession of the substituted merchandise prior to its exportation or destruction. A drawback claimant under 19 U.S.C. 1313(j)(2) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction

for drawback (see § 191.82 of this part). The claimant shall file such certification as part of the drawback claim.

§ **191.34 Certificate of delivery required.**

(a) Direct identification; purpose; when required. If the exported or destroyed merchandise claimed for drawback under 19 U.S.C. 1313(j)(1) was not imported by the exporter or destroyer, the drawback claimant must have a properly executed certificate of delivery prepared by the importer and each intermediate party. Each such transfer of the merchandise must be documented by its own certificate of delivery.

(1) Completion. The certificate of delivery shall be completed as provided in § 191.10 of this part. Each party must also certify on the certificate of delivery that the party did not use the exported or destroyed merchandise (see § 191.31(c) of this part).

(2) Retention. The drawback claimant shall retain the certificate for submission to Customs as part of the claim, if requested (see § 191.51(a)(2) of this part).

(b) Substitution. For purposes of substitution unused merchandise drawback, 19 U.S.C. 1313(j)(2), if the importer transfers to another party imported, duty-paid merchandise, commercially interchangeable merchandise, or any combination thereof, the importer shall prepare and issue in favor of such party a certificate of delivery covering the transferred

merchandise. The certificate of delivery must expressly state that it is prepared pursuant to 19 U.S.C. 1313(j)(2). Merchandise so transferred for which drawback is allowed under 19 U.S.C. 1313(j)(2) may not be designated as imported merchandise for the purpose of manufacturing drawback. Certificates of delivery under this paragraph are subject to the provisions for completion and retention of certificates of delivery in paragraphs (a)(1) and (a)(2) of this section.

(c) Warehouse transfer and withdrawals. The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery need be prepared covering prior transfers of merchandise while in a bonded warehouse, because such transfers will be recorded in the warehouse entry (see § 144.22 of this chapter).

§ 191.35 Notice of intent to export; examination of merchandise.

(a) Notice. A notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim (19 U.S.C. 1313(j)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of intended examination a Notice of Intent to Export/Destroy on Customs Form xxx at least 2 working days prior to the date of intended exportation unless Customs approves another filing period or the

claimant has been granted a waiver of prior notice (see § 191.91 of this part).

(b) Required Information. The notice shall certify that the merchandise has not been used in the United States before exportation. In addition, the notice shall provide the bill of lading number, if known, the name and telephone number of a contact person, and the location of the merchandise should Customs decide to examine the merchandise.

(c) Decision to examine or to waive examination. Within two (2) working days after receipt of the Notice of Intent to Export/Destroy (see paragraph (a) of this section), Customs will notify the party designated on the Notice of Customs decision to either examine the merchandise to be exported, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (d) of this section), but the merchandise is exported without having been presented to Customs for examination, any drawback claim, or part thereof, based on the Notice of Intent to Export/Destroy, shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported without delay.

(d) Time and place of examination. If Customs gives timely notice of its decision to examine the export merchandise, the

merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported without examination if Customs fails to timely examine the merchandise after presentation to Customs. If the examination is completed at a port other than the port of actual exportation, the merchandise shall be transported in-bond to the port of exportation.

(e) Extent of examination. The appropriate Customs office may permit release of merchandise without examination, or may examine routinely (to the extent determined to be necessary) the items exported.

§ 191.36 Failure to file Notice of Intent to Export or Destroy merchandise.

(a) General; application. Merchandise which has been exported without complying with the requirements of § 191.35(a) or § 191.91 of this part may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) subject to the following conditions:

(1) Application. The claimant must file a written application with the drawback office where the drawback claims will be filed. Such application shall include the following:

(i) Required information.

(A) Name, address, and identification number of applicant;

(B) Name, address, and identification number of exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered in this application;

(E) The origin of the above merchandise;

(F) Estimated number of export transactions covered in this application;

(G) The port(s) of exportation;

(H) Estimated dollar value of potential drawback to be covered in this application; and

(I) The relationship between the parties involved in the import and export transactions;

(ii) Written declarations regarding:

(A) The reason(s) that Customs was not notified of the intent to export; and

(B) Whether the applicant, to the best of its knowledge, will have future exportations on which unused merchandise drawback might be claimed; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for

purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)):

(1) Business records prepared in the ordinary course of business;

(2) Laboratory records prepared in the ordinary course of business; and

(3) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) One-Time Use. The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) Claims filed pending disposition of application. Drawback claims may be filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by Customs.

(b) Customs action. In order for Customs to evaluate the application under this section, Customs may request, and the applicant shall provide, any of the information listed in

paragraph (a)(1)(iii)(A)(1) through (3) of this section. In making its decision to approve or deny the application under this section, Customs will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraph (a)(1)(iii)(A)(1) through (3) of this section and requested by Customs under this paragraph; and

(3) The applicant's prior record with Customs.

(c) Time for Customs action. Customs will notify the applicant in writing within 90 days of its decision to approve or deny the application, or of Customs inability to approve, deny or act on the application.

(d) Appeal of denial of application. If Customs denies the application, the applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the denial date of the application. If Customs denies this initial appeal, the applicant may file a further written appeal with Customs Headquarters, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. Customs may extend the 30 day period for appeal to the drawback office or to Customs Headquarters, for good cause, if the applicant applies in writing for such extension within the

appropriate 30 day period above.

(e) Future intent to export unused merchandise. If an applicant states it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (see § 191.91 of this part). If the applicant seeks waiver of prior notice under § 191.91, any documentation submitted to Customs to comply with this section will be included in the request under § 191.91. An applicant which states that it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice shall notify Customs of its intent to export prior to each such exportation, in accordance with § 191.35.

§ 191.37 Records.

(a) Maintained by claimant; by others. All records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313(j)(1) or (j)(2), as applicable, and this part, shall be retained for 3 years after payment of such claims.

(b) Accounting for the merchandise. Merchandise subject to drawback under 19 U.S.C. 1313(j)(1) and (j)(2) shall be accounted

for in a manner which will enable the claimant:

(1) To determine, and Customs to verify, the applicable import entry or certificate of delivery;

(2) To determine, and Customs to verify, the applicable exportation; and

(3) To identify with respect to the import entry or certificate of delivery, the imported duty-paid merchandise.

Subpart D - Rejected Merchandise

§ 191.41 Rejected merchandise drawback.

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid; and which does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation. The claimant must show by evidence satisfactory to Customs that the exported or destroyed merchandise was defective at the time of importation, or was not in accordance with sample or specifications, or was shipped without the consent of the consignee.

§ 191.42 Procedure.

(a) Return to Customs custody. The claimant must return the merchandise to Customs custody within 3 years after the date the merchandise was originally released from Customs custody.

Drawback will be denied on merchandise returned to Customs custody after the statutory 3-year time period or exported without return to Customs custody.

(b) Required documentation. The claimant shall submit documentation to the drawback office as part of the drawback claim to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation. If the claimant was not the importer, the claimant must:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) Notice. A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of intended redelivery to Customs custody a Notice of Intent to Export/Destroy on Customs Form xxx at least 5 working days prior to the date of intended return to Customs custody. Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (see § 191.91 of this part) is inapplicable to exportations under 19

U.S.C. 1313(c).

(d) Required Information. The notice shall provide the bill of lading number, if known, the name and telephone number of a contact person, and the location of the merchandise.

(e) Decision to waive examination. Within two (2) working days after receipt of the Notice of Intent to Export/Destroy (see paragraph (c) of this section), Customs will notify the party designated on the Notice of Customs decision to either examine the merchandise to be exported, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (f) of this section), but the merchandise is exported without having been presented to Customs for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export/Destroy, shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported without delay and shall be deemed to have been returned to Customs custody.

(f) Time and place of examination. If Customs gives timely notice of its decision to examine the export merchandise, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The

merchandise may be exported without examination if Customs fails to timely examine the merchandise after presentation to Customs, and in such case the merchandise shall be deemed to have been returned to Customs custody. If the examination is completed at a port other than the port of actual exportation, the merchandise shall be transported in-bond to the port of exportation.

(g) Extent of examination. The appropriate Customs office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported.

(h) Drawback claim. When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (see § 191.51(b) of this part). The procedures for restructuring a claim (see § 191.53 of this part) shall apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) Exportation. The claimant shall export the merchandise under Customs supervision and shall provide documentary evidence of exportation. The claimant may establish exportation by mail as set out in § 191.74 of this part.

§ 191.43 Unused merchandise claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the

merchandise qualifies therefor.

§ 191.44 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain rejected merchandise drawback by complying with the procedures set forth in § 191.71(a) of this part relating to destruction.

Subpart E - Completion of Drawback Claims

§ 191.51 Completion of drawback claims.

(a) General. (1) Complete claim. Unless otherwise specified, a complete drawback claim under this part shall consist of the drawback entry on Customs Form 331, applicable certificate(s) of manufacture and delivery, applicable Notice(s) of Intent to Export or Destroy, applicable import entry number(s), coding sheet unless the data is filed electronically, and evidence of exportation or destruction under subpart G of this part.

(2) Certificates. Additionally, the associated certificate(s) of delivery must be in the possession of the claimant at the time of the filing of the claim. Any required certificate(s) of manufacture and delivery, if not previously filed with Customs, must be filed with the claim. Previously filed certificates of manufacture and delivery, if required, shall be referenced in the claim.

(b) Drawback due. Drawback claimants are required to correctly calculate the amount of drawback due. The amount of

drawback requested on the drawback entry is generally to be 99 percent of the import duties eligible for drawback. (For example, if $1,000 in import duties are eligible for drawback less 1 percent ($10), the amount claimed on the drawback entry should be for $990. Claims exceeding 99 percent will not be paid until the calculations have been corrected by the claimant.) Claims for less than 99 percent will be paid as filed, unless the claimant amends the claim in accordance with § 191.52(c).

(c) HTSUS number(s) or Schedule B commodity number(s) of imports and exports. Drawback claimants are required to provide, on all drawback claims they submit, the Harmonized Tariff Schedule of the United States (HTSUS) number(s) for the designated imported merchandise and the HTSUS number(s) or the Schedule B commodity number(s) for the exported articles or articles. For imports, HTSUS numbers shall be provided from the entry summary(s) and other entry documentation, when the claimant is the importer of record, or from the certificate of delivery and/or the certificate of manufacture and delivery, otherwise. For exports, the HTSUS number(s) or Schedule B commodity number(s) shall be from the Shipper's Export Declaration(s)(SEDs), when required. If no SED is required (see, e.g., 15 CFR 30.58), the claimant shall provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the SED, but for the exemption from the requirement for an SED. Manufacturing drawback claimants filing drawback claims based on

certificate(s) of manufacture and delivery filed with the claims or previously filed with Customs (see paragraph (a) of this section), may meet this requirement with the HTSUS number(s) on such certificate(s). The HTSUS number will be stated to at least 6 digits.

(d) Place of filing. For manufacturing drawback, the claimant shall file the drawback claim with the drawback office listed, as appropriate, in the general manufacturing drawback ruling or the specific manufacturing drawback ruling (see §§ 191.7 and 191.8 of this part). For other kinds of drawback, the claimant shall file the claim with any drawback office.

§ 191.52 Completing, perfecting or amending claims.

(a) Completing the claim. (1) Upon review of a drawback claim, if the claim is determined to be incomplete (see § 191.51(a)(1)), the claim will be rejected and Customs will notify the filer. The filer shall then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 3 years (see paragraph (a)(2) of this section).

(2) A completed drawback claim, with all required documents, shall be filed within 3 years after the date of exportation or destruction of the articles which are the subject of the claim. No extension will be granted unless the claimant establishes that the Customs Service was responsible for the

untimely filing (see 19 U.S.C. 1313(r)(1)). The only exception is for landing certificates under § 191.76 of this part.

(b) Perfecting the claim; additional evidence required. If Customs determines that the claim is complete according to the requirements of § 191.51(a)(1), but that additional evidence or information is required, Customs will notify the filer. The claimant shall furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by Customs. Customs may extend this 30 day period for good cause if the claimant files a written request for such extension within the 30 day period. The evidence or information required under this paragraph may be filed more than 3 years after the date of exportation or destruction of the articles which are the subject of the claim. Such additional evidence or information may include, but is not limited to:

(1) A copy of the export bill of lading which shall show that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from the party in whose name the articles were shipped which shall be attached to such bill of lading, showing that the party filing the entry is authorized to claim drawback and receive payment (the claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated

for the merchandise identified or designated; and

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed.

(c) Amending the claim; supplemental filing. Amendments to claims for which the drawback entries have not been liquidated must be made within three (3) years after the date of exportation or destruction of the articles which are the subject of the drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in § 191.84 of this part and part 174 of this chapter.

§ 191.53 Restructuring of claims.

(a) General. Customs may require claimants to restructure their drawback claims in such a manner as to foster Customs administrative efficiency. In making this determination, Customs will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback ruling or the specific manufacturing drawback ruling.

(b) Exemption from restructuring; criteria. In order to be

exempt from a restructuring, a claimant must demonstrate an inability or impracticability in restructuring its claims as required by Customs and must provide a mutually acceptable alternative. Criteria used in such determination will include a demonstration by the claimant of one or more of the following:

(1) Complexities caused by multiple commodities or the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling;

(2) Variable and conflicting manufacturing and inventory periods (for example, financial, accounting and manufacturing records maintained are significantly different);

(3) Complexities caused by multiple manufacturing locations;

(4) Complexities caused by difficulty in adjusting accounting and inventory records (for example, records maintained - financial or accounting - are significantly different); and/or

(5) Complexities caused by significantly different methods of operation.

Subpart F - Verification of Claims

§ 191.61 Verification of drawback claims.

(a) Authority. (1) Drawback office. All claims shall be subject to verification by the port director where the claim is filed.

(2) Two or more locations. The port director

selecting the claim for verification may forward copies of the claim and, as applicable, letters of notification and acknowledgement for the general manufacturing drawback ruling or application for, and letter of approval of, a specific manufacturing drawback ruling, and request for verification, to other drawback offices when deemed necessary.

(b) Method. The verifying office shall verify the accuracy of the related general manufacturing drawback ruling or specific manufacturing drawback ruling and the selected drawback claims. Verification may include an examination of all records relating to the transaction(s).

(c) Liquidation. When a claim has been selected for verification, liquidation will be postponed only on the drawback entries for those claims selected for verification. Postponement will continue in effect until the verification has been completed and the appropriate port director issues a report. In the event that a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or, in Customs discretion, all claims for that claimant.

§ 191.62 Falsification of drawback claims.

(a) Criminal penalty. Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the

purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be subject to the criminal provisions of 18 U.S.C. 550, 1001 or any other appropriate criminal sanctions.

(b) Civil penalty. Any person who seeks, induces or affects the payment of drawback, by fraud or negligence, or attempts to do so, is subject to civil penalties, as provided under 19 U.S.C. 1593a. A fraudulent violation is subject to a maximum administrative penalty of 3 times the total actual or potential loss of revenue. Repetitive negligent violations are subject to a maximum penalty equal to the actual or potential loss of revenue.

Subpart G - Evidence of Exportation and Destruction

§ 191.71 Drawback on articles destroyed under Customs supervision.

(a) Procedure. At least 7 working days before the intended date of destruction of merchandise or articles upon which drawback is intended to be claimed, a Notice of Intent to Export/Destroy on Customs Form xxx shall be filed by the claimant with the Customs port where the destruction is to take place, giving notification of the date and specific location where the destruction is to occur. Within 4 working days, Customs shall advise the filer of its determination to witness or not to witness the destruction. If the filer of the notice is not so notified within 4 working days, the merchandise may be destroyed

without delay and will be deemed to have been destroyed under Customs supervision. Unless Customs determines to witness the destruction, the destruction of the articles following timely notification on Customs Form xxx shall be deemed to have occurred under Customs supervision. If Customs attends the destruction, it must certify the Notice of Intent to Export/Destroy.

(b) Evidence of destruction. When Customs declines the opportunity to attend the destruction, the claimant must submit evidence that destruction took place in accordance with the approved Notice of Intent to Export/Destroy. The evidence must be issued by a disinterested third party (for example, a landfill operator). The type of evidence depends on the method and place of destruction, but must establish that the merchandise was, in fact, destroyed within the meaning of "destruction" in § 191.2(g) (i.e., that no articles of commercial value remained after destruction).

(c) Completion of drawback entry. After destruction, the claimant and, if applicable, the Customs official witnessing the destruction shall certify on an attachment to Customs Form 331 the time and place of destruction.

§ 191.72 Alternative procedures for establishing exportation.

Exportation of articles for drawback purposes shall be established by complying with one of the procedures provided for in this section (in addition to providing prior notice of intent

to export (see §§ 191.35, 191.36, 191.42, and 191.91 of this part)). Supporting documentary evidence shall establish fully the time and fact of exportation and the identity of the exporter. The alternative procedures for establishing exportation outlined by this section are:

(a) Actual evidence of exportation consisting of documentary evidence, such as the original bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest, or certified copies thereof, issued by the exporting carrier;

(b) Export summary (§ 191.73);

(c) Certified export invoice for mail shipments (§ 191.74);

(d) Notice of lading for supplies on certain vessels or aircraft (§ 191.112); or

(e) Notice of transfer for articles manufactured or produced in the U.S. which are transferred to a foreign trade zone (§ 191.183).

§ 191.73 Export summary procedure.

(a) General. The export summary procedure consists of a chronological summary of exports used to support a drawback claim. It may be submitted as part of the claim in lieu of actual documentary evidence of exportation. It may be used by any claimant for manufacturing drawback, and for unused or rejected merchandise drawback, as well as for drawback involving

the substitution of finished petroleum derivatives (19 U.S.C. 1313(a), (b), (c), (j), or (p)). It is intended to improve administrative efficiency.

(b) Format of chronological export summary. The chronological summary of the exports shall contain the data provided for in the following sample:

CHRONOLOGICAL SUMMARY OF EXPORTS

Drawback entry No. _____.

Claimant _____; Exporter _____ (if different from claimant)

Period from _____ to _____.

Date of export	Unique export identifier[1]	Description	Net quantity	Sched. B com. # or HTSUS#	Destination
(1)	(2)	(3)	(4)	(5)	(6)

[1]This number is to be used to associate the export transaction presented on the Chronological Export Summary to the appropriate documentary evidence of exportation (for example, Bill of Lading, Manifest no., invoice, etc.).

(c) Documentary evidence. (1) Records. The claimant, whether or not the exporter, shall maintain the chronological summary of the exports and such additional evidence of exportation required by Customs to establish fully the identity of the exported articles and the fact of exportation. The bill of lading issued by the exporting carrier is the primary proof of export for drawback purposes.

(2) Maintenance of records. The claimant shall submit as part of the claim the chronological export summary (see § 191.51). The claimant shall retain records supporting the Chronological Export Summary for 3 years after payment of the related claim. Customs may at any time request to review the underlying documentation supporting the Chronological Export Summary.

§ 191.74 Certification of exportation by mail.

If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the official postal records which describe the mail shipment shall be sufficient to prove exportation. The postal record shall be identified on the drawback entry, and shall be retained by the claimant and submitted as part of the drawback claim (see § 191.10(e) of this part).

§ 191.75 Exportation by the Government.

(a) Claim by U.S. Government. When a department, branch, agency, or instrumentality of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in § 191.73. No bond shall be required when the United States Government claims drawback.

(b) Claim by supplier. When a supplier of merchandise to the Government or any of the parties specified in § 191.82 of

this part claims drawback, exportation shall be established under § 191.73.

§ 191.76 Landing certificate.

(a) Requirement. Prior to the liquidation of the drawback entry, Customs may require a landing certificate for every aircraft departing from the United States under its own power if drawback is claimed on the aircraft or a part thereof, except for the exportation of supplies under § 309 of the Act, as amended (19 U.S.C. 1309). The certificate shall show the exact time of landing in the foreign destination and describe the aircraft or parts subject to drawback in sufficient detail to enable Customs officers to identify them with the documentation of exportation.

(b) Written notice of requirement and time for filing. A landing certificate shall be filed within one year from the written Customs request, unless Customs Headquarters grants an extension.

(c) Signature. A landing certificate shall be signed by a revenue officer of the foreign country of the export's destination, unless the embassy of that country certifies in writing that there is no Customs administration in that country, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) Inability to produce landing certificates. A landing certificate shall be waived by the requiring Customs authority if

the claimant demonstrates inability to obtain a certificate and offers other satisfactory evidence of export.

Subpart H - Liquidation and Protest of Drawback Entries

§ 191.81 Liquidation.

(a) Time of liquidation. Drawback entries may be liquidated after:

(1) Liquidation of the import entry becomes final; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) Claims based on estimated duties. (1) Drawback may be paid on estimated duties if the import entry has not been liquidated, or the liquidation has not become final (because of a protest being filed) (see also § 173.4(c) of this chapter), and the drawback claimant and any other party responsible for the payment of liquidated import duties each file a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law. The drawback claimant shall, to the best of its knowledge, identify each import entry that has been protested or that is the subject of a request for reliquidation (19 U.S.C. 1520(c)(1)) and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties, shall not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry

discloses that the total amount of import duty is different from the total estimated duties deposited, the party responsible for the payment of liquidated duties, as applicable, shall:

(i) Be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) Claims based on voluntary tenders or other payments of duties. (1) Voluntary tenders. Drawback may be paid on voluntary tenders of the unpaid amount of lawful ordinary Customs duties on an entry, or withdrawal from warehouse, for consumption provided that:

(i) The entry, or withdrawal from warehouse, for consumption for which the voluntary tender was made is specifically identified in the voluntary tender; and

(ii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) Other payments of duty. Drawback may be paid on any other payment of lawful ordinary Customs duties for an entry, or withdrawal from warehouse, for consumption, such as payment of a demand for duties under 19 U.S.C. 1592(d), provided that:

(i) The payment is specifically identified as

duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(3) Written request and waiver. Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each file a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any right to payment or refund under other provisions of law.

(d) Claims based on liquidated duties. Drawback shall be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) Liquidation procedure. When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the articles has

been established, the drawback office shall determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information.

(f) Distribution and value of multiple products.

(1) Distribution. Where two or more products result from the manufacture or production of merchandise, drawback shall be distributed to the several products in accordance with their relative value at the time of separation.

(2) Value. The value to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions shall be the market value (see § 191.2(r) of this part), unless another value is approved by Customs.

(g) Payment. The drawback office shall authorize the amount of the refund due as drawback to the claimant.

§ 191.82 Person entitled to claim drawback.

Unless otherwise provided in this part (see §§ 191.42(b), 191.162, 191.175(a), 191.186), the exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, waives the right to claim drawback and assigns such right to the manufacturer, producer, importer, or intermediate party (in the case of drawback under 19 U.S.C. 1313(j)(1), see § 191.33(a)). Such

certification shall also affirm that the exporter (or destroyer) has not and will not assign the right to claim drawback on the particular exportation or destruction to any other party.

§ 191.83 Person entitled to receive payment.

Drawback is paid to the claimant (see § 191.82).

§ 191.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry shall be in accordance with part 174 of this chapter (19 CFR part 174).

Subpart I - Privileges

§ 191.91 Waiver of prior notice of intent to export.

(a) General. The requirement in § 191.35 of this part for prior notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim under § 313(j) of the Act, as amended (19 U.S.C. 1313(j)), may be waived under the provisions of this section.

(b) Application. (1) Who may apply. A claimant for unused merchandise drawback under 19 U.S.C. 1313(j) may apply for a waiver of prior notice of intent to export merchandise under this section.

(2) Contents of application. An applicant for a waiver of prior notice under this section must file a written application with the drawback office where the claims will be filed. Such application shall include the following:

(i) Required information:

(A) Name, address, and identification number of applicant;

(B) Name, address, and identification number of current exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions during the next 12-month period covered by this application;

(G) Port(s) of exportation to be used during the next 12-month period covered by this application;

(H) Estimated dollar value of potential drawback during the next 12-month period covered by this application; and

(I) The relationship between the parties involved in the import and export transactions;

(ii) A written declaration whether or not the applicant has previously been denied a waiver request, or had an approval of a waiver revoked, by any other drawback office; and

(iii) A certification that the following documentary evidence will be made available for Customs review

upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)):

(1) Business records prepared in the ordinary course of business;

(2) Laboratory records prepared in the ordinary course of business; and

(3) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with other applicable drawback requirements, upon Customs request under paragraph (b)(2)(iii) of this section.

(3) Samples of records to accompany application. To expedite the processing of applications under this section, the application should contain at least one sample of each of the records to be used to establish compliance with the applicable requirements (that is, sample of import document (for example, Customs Form 7501), sample of export document (for example, bill of lading), and samples of business, laboratory, and inventory

records certified, under paragraph (b)(2)(iii)(A)(1) through (3) of this section, to be available to Customs upon request).

(c) Action on application. (1) Customs review. The drawback office shall review and verify the information submitted on and with the application. Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application. In order for Customs to evaluate the application, Customs may request any of the information listed in paragraph (b)(2)(iii)(A)(1) through (3) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims;

(iii) Whether waiver of prior notice was previously revoked or suspended; and

(iv) The presence or absence of any failure to present merchandise to Customs for examination after Customs had timely notified the party filing a Notice of Intent to

Export/Destroy of Customs intent to examine the merchandise (see § 191.35 of this part).

(2) Approval. The approval of an application for waiver of prior notice of intent to export, under this section, shall operate prospectively, applying only to those export shipments occurring after the date of the waiver. It shall be subject to a stay, as provided in paragraph (d) of this section.

(3) Denial. If an application for waiver of prior notice of intent to export, under this section, is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (g) of this section. The applicant may not reapply for a waiver until the reason for the denial is resolved.

(d) Stay. A privilege holder's privilege may be stayed, for a specified reasonable period, should the agency desire for any reason to examine the merchandise being exported with drawback prior to its exportation for purposes of verification. A stay of this privilege shall take effect on the date of the agency's letter notifying the privilege holder of the stay and shall remain in effect for the period specified in that letter, or such earlier date as the agency notifies the privilege holder in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the privilege may

resume.

(e) Proposed revocation. Customs may propose to revoke the approval of an application for waiver of prior notice of intent to export, under this section, for good cause (that is, noncompliance with the drawback law and/or regulations). Customs shall give written notice of the proposed revocation of a waiver of prior notice of intent to export. The notice shall specify the reasons for Customs proposed action and provide information regarding the procedures for challenging Customs proposed revocation action as prescribed in paragraph (g) of this section.

(f) Action by drawback office controlling. Action by the appropriate drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export, unless reversed by Customs Headquarters, will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for waiver of prior notice of intent to export is approved, the claimant shall submit a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, when the export upon which the claim is based was without prior notice, under this section.

(g) Appeal of denial or challenge to proposed revocation. An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made by letter to the drawback office issuing the denial or proposed revocation and must be filed

within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to Customs Headquarters and must be filed within 30 days of the denial date of the initial appeal or challenge. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or privilege holder for such extension filed with the appropriate office within the 30-day period.

§ 191.92 Accelerated payment.

(a) Scope. Accelerated payment of drawback is available on claims covering exportations (or destructions, if applicable) under the manufacturing, rejected or unused merchandise drawback provisions, as well as claims for the substitution of finished petroleum derivatives (19 U.S.C. 1313(a), (b), (c), (j), or (p)). Accelerated payment of a drawback claim does not constitute liquidation of the drawback entry.

(b) Application for approval; contents. A person who wishes to apply for accelerated payment of drawback must file a written application with the drawback office where claims will be filed.

(1) Required information. The application must contain:

(i) Company name and address;

(ii) Identification number (including suffixes);

(iii) Identity (by name and title) of the person in claimant's organization who will be responsible for the drawback program;

(iv) Description of the bond coverage the applicant intends to use to cover accelerated payments of drawback (see paragraph (d) of this section), including:

(A) Identity of the surety to be used;

(B) Dollar amount of bond coverage for the first year under the accelerated payment procedure; and

(C) Procedures to ensure that bond coverage remains adequate (that is, procedures to alert the applicant when and if its accelerated payment potential liability exceeds its bond coverage);

(v) Description of merchandise and/or articles covered by the application;

(vi) Type(s) of drawback covered by the application; and

(vii) Estimated dollar value of potential drawback during the next 12-month period covered by the application.

(2) Previous applications. In the application, the applicant must state whether or not the applicant has previously been denied an application for accelerated payment of drawback, or had an approval of such an application revoked by any drawback

office.

(3) Certification of compliance. In or with the application, the applicant must also submit a certification, signed by the applicant, that all applicable statutory and regulatory requirements for drawback will be met.

(4) Description of claimant's drawback program. With the application, the applicant must submit a description (with sample documents) of how the applicant will ensure compliance with its certification that the statutory and regulatory drawback requirements will be met. This description may be in the form of a booklet. The detail contained in this description should vary depending on the size and complexity of the applicant's accelerated drawback program (for example, if the dollar amount is great and there are several kinds of drawback involved, with differing inventory, manufacturing, and shipping methods, greater detail in the description will be required). The description must include at least:

(i) The name of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(ii) The procedures and controls demonstrating compliance with the statutory and regulatory drawback requirements;

(iii) The parameters of claimant's drawback record-keeping program, including the retention period and method

(for example, paper, electronic, etc.);

(iv) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(v) The procedures that will be used to notify Customs of changes to the claimant's drawback program, variances from the procedures described in this application, and violations of the statutory and regulatory drawback requirements; and

(vi) The procedures for an annual review by the claimant to ensure that its drawback program complies with the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

(c) Sample application. The drawback office, upon request, shall provide applicants for accelerated payment with a sample letter format to assist them in preparing their submissions.

(d) Bond required. If approved for accelerated payment, the claimant must furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback

office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) Action on application. (1) Customs review. The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in paragraph (b)(4) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or any other drawback privilege was previously revoked or suspended.

(2) Notification to applicant. Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the

application.

(3) Approval. The approval of an application for accelerated payment, under this section, shall operate prospectively, applying to those claims filed after the date of approval. It shall be subject to a stay, as provided in paragraph (f) of this section.

(4) Denial. If an application for accelerated payment of drawback under this section is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (i) of this section. The applicant may not reapply for accelerated payment of drawback until the reason for the denial is resolved.

(f) Stay. A privilege holder's privilege may be stayed, for a specified reasonable period, should the agency desire for any reason to examine compliance with the drawback law and regulations for purposes of verification. A stay of this privilege shall take effect on the date of the agency's letter notifying the privilege holder of the stay and shall remain in effect for the period specified in the agency's letter, or such earlier date as the agency notifies the privilege holder in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the privilege may resume.

(g) Proposed revocation. Customs may propose to revoke the

approval of an application for accelerated payment of drawback under this section, for good cause (that is, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, Customs shall give written notice of the proposed revocation of the accelerated payment privilege. The notice shall specify the reasons for Customs proposed action and the procedures for challenging Customs proposed revocation action as prescribed in paragraph (i) of this section.

(h) Action by drawback office controlling. Action by the appropriate drawback office to approve, deny, stay, or revoke the privilege of accelerated payment of drawback will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for accelerated payment of drawback is approved and the claimant desires accelerated payment of drawback in a drawback claim filed in a drawback office other than the approving drawback office, the claimant shall submit a copy of the approval letter with the first drawback claim filed in the drawback office other than the approving office.

(i) Appeal of denial or challenge to proposed revocation. An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made in writing to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may

itself be appealed to Customs Headquarters and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or privilege holder for such extension filed with the appropriate office within the 30-day period.

(j) Payment. The drawback office approving a drawback claim in which accelerated payment of drawback was requested (and in which the claimant has been approved for accelerated payment of drawback under this section) shall certify the drawback claim for payment within 3 weeks after filing, if a component for electronic filing of drawback claims, records, or entries which has been implemented under the National Customs Automation Program (NCAP) (19 U.S.C. 1411 - 1414) is used, and within 3 months after filing, if the claim is filed manually. After liquidation, the drawback office shall certify payment of any amount due or demand a refund of any excess amount paid. Any excess amount of duty the subject of accelerated payment that is not refunded within 30 days after the date of liquidation of the related drawback entry shall be considered delinquent (see §§ 24.3a and 113.65(b) of this chapter.)

§ 191.93 Combined applications.

An applicant for the privileges provided for in §§ 191.91 and 191.92 of this subpart may apply for only one privilege, both

privileges separately, or both privileges in one application package. In the latter instance, the intent to apply for both privileges must be clearly stated. In all instances, all of the requirements for the privilege(s) applied for must be met (for example, in a combined application for both privileges, all of the information required for each privilege, all required sample documents for each privilege, and all required certifications must be included in and with the application).

Subpart J - Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured from Domestic Tax-Paid Alcohol

§ 191.101 Drawback allowance.

(a) Drawback. Section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), provides for drawback of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol.

(b) Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa. Drawback of internal revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with § 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for

the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.102 Procedure.

(a) General. Other provisions of this part relating to direct identification drawback (see subpart B of this part) shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) Manufacturing record. The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) Additional information required on the manufacturer's application for a specific manufacturing drawback ruling. The manufacturer's application for a specific manufacturing drawback ruling, under § 191.8 of this part, shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) Variance in alcohol content. (1) Variance of more

than 5 percent. If the percentage of alcohol contained in a medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer shall apply for a new specific manufacturing drawback ruling pursuant to § 191.8 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) Variance of 5 percent or less. Variances of 5 percent or less of the volume of the product shall be reported to the appropriate drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from Customs Headquarters.

(e) Time period for completing claims. The 3-year period for the completion of drawback claims prescribed in 19 U.S.C. 1313(r)(1) shall be applicable to claims for drawback under this subpart.

(f) Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol. When the drawback claim covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal revenue tax.

(g) Description of the alcohol. The description of the alcohol stated in the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 191.103 Additional requirements.

(a) Manufacturer claims domestic drawback. In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on alcohol under §§ 5131, 5132, 5133 and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133 and 5134).

(b) Manufacturer does not claim domestic drawback.

(1) Submission of statement. If no claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) Contents of the statement. The statement shall show the:

(i) Quantity and description of the exported

products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the warehouse from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Drawback office where the claim will be filed.

(3) Verification of the statement. The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the drawback office designated, and retain the copy.

§ 191.104 Alcohol, Tobacco and Firearms certificates.

(a) Request. The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the Customs drawback office where the drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) Contents. The request shall state the:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp, if any;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs drawback office where the drawback claim will be processed.

(c) Extracts of Alcohol, Tobacco and Firearms certificates. If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that drawback office. The drawback office shall note that the copy of the extract was prepared and transmitted.

§ 191.105 Liquidation.

The drawback office shall ascertain the final amount of drawback due by reference to the certificate of manufacture and delivery and the specific manufacturing drawback ruling under which the drawback claimed is allowable.

§ 191.106 Amount of drawback.

(a) Claim filed with Bureau of Alcohol, Tobacco and Firearms. If the declaration required by § 191.103 of this subpart shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, drawback under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)), shall be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) Claim not filed with Bureau of Alcohol, Tobacco and Firearms. If the declaration and verified statement required by § 191.103 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) No deduction of 1 percent. No deduction of 1 percent shall be made in drawback claims under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) Payment. The drawback due shall be paid in accordance with § 191.81(f) of this part.

Subpart K - Supplies for Certain Vessels and Aircraft

§ 191.111 Drawback allowance.

Section 309 of the Act, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft.

§ 191.112 Procedure.

(a) General. The provisions of this subpart shall override other conflicting provisions of this part.

(b) Customs forms. The drawback claimant shall file with the drawback office the drawback entry on Customs Form 331 annotated for 19 U.S.C. 1309, and attach thereto a notice of lading on Customs Form 7514, in quadruplicate, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable.

(c) Time of filing notice of lading. In the case of drawback in connection with 19 U.S.C. 1309(b), the drawback notice of lading on Customs Form 7514 may be filed either before or after the lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(d) Contents of notice. The notice of lading shall show:

(1) The name of the vessel or identity of the aircraft

on which articles were or are to be laden;

(2) The number and kind of packages and their marks and numbers;

(3) A description of the articles and their weight (net), gauge, measure, or number; and

(4) The name of the exporter.

(e) Assignment of numbers and return of one copy. The drawback office shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(f) Declaration. (1) Requirement. The master or an authorized representative of the vessel or aircraft having knowledge of the facts shall complete the section of the notice entitled "Declaration of Master or Other Officer".

(2) Procedure if notice filed before lading. If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the drawback office and returned to the exporter for this purpose.

(3) Procedure if notice filed after lading. If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) Filing. The drawback claimant shall file with the drawback office both the drawback entry and the drawback notice

or separate document containing the declaration of the master or other officer or representative.

(g) Information concerning class or trade. Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(h) Vessel or aircraft required to clear or obtain a permit to proceed. After the vessel or aircraft has cleared or obtained a permit to proceed, the drawback office shall complete the section entitled "Customs Certification" on one of the copies of the notice of lading. The drawback office shall return the completed copy and one other copy to the exporter or the person designated by the exporter for subsequent filing with the drawback claim.

(i) Vessel or aircraft not required to clear or obtain a permit to proceed. If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the drawback office shall return to the exporter or the person designated by the exporter two copies of the notice, noting the absence of a requirement for clearance or permit to proceed, for subsequent filing with the drawback claim. The claimant shall file with the claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(j) Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft. The drawback office where the drawback claim is filed shall require a declaration or other evidence showing to its satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(k) Fuel laden on vessels or aircraft as supplies.

(1) Composite notice of lading. In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the drawback office a composite notice of lading on the reverse side of Customs Form 7514, for each calendar month. The composite notice of lading shall describe all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. This includes fuel laden for flights or voyages between the contiguous U.S. and Hawaii, Alaska, or any U.S. possessions (see § 10.59 of this chapter).

(2) Contents of composite notice. The composite notice shall show for each voyage or flight, either on the reverse side of Customs Form 7514 or on a continuation sheet:

(i) The identity of the vessel or aircraft;

(ii) A description of the fuel supplies laden;

(iii) The quantity laden; and

(iv) The date of lading.

(3) Declaration of owner or operator. An authorized vessel or airline representative having knowledge of the facts shall complete the section "Declaration of Master or Other Officer" on Customs Form 7514.

(l) Desire to land articles covered by notice of lading. The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of § 309(c) of the Act, as amended (19 U.S.C. 1309(c)).

Subpart L - Meats Cured with Imported Salt

§ 191.121 Drawback allowance.

Section 313(f) of the Act, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt.

§ 191.122 Procedure.

(a) General. Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) Customs form. The forms used for other drawback claims

shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

§ 191.123 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

Subpart M - Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

§ 191.131 Drawback allowance.

Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term.

§ 191.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.133 Explanation of terms.

(a) Materials. Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original

construction and equipment of vessels and aircraft and not to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) Foreign account and ownership. Foreign account and ownership, as used in § 313(g) of the Act, as amended (19 U.S.C. 1313(g)), means only vessels or aircraft built or equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

Subpart N - Foreign-Built Jet Aircraft Engines Processed in the United States

§ 191.141 Drawback allowance.

Section 313(h) of the Act, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

§ 191.142 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.143 Drawback entry.

(a) Filing of entry. Drawback entries covering these

foreign-built jet aircraft engines shall be filed on Customs Form 331, modified to show that the entry covers jet aircraft engines processed under § 313(h) of the Act, as amended (19 U.S.C. 1313(h)).

(b) Contents of entry. The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 191.144 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

Subpart O - Merchandise Exported from Continuous Customs Custody

§ 191.151 Drawback allowance.

(a) Eligibility of entered or withdrawn merchandise.

(1) Under 19 U.S.C. 1557(a). Section 557(a) of the Act, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody for a period not to exceed 5 years from the date of importation.

(2) Under 19 U.S.C. 1313. Imported merchandise that

has not been regularly entered or withdrawn for consumption, shall not satisfy any requirement for use, importation, exportation or destruction, and shall not be available for drawback, under § 313 of the Act, as amended (19 U.S.C. 1313) (see 19 U.S.C. 1313(u)).

(b) Guantanamo Bay. Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart and merchandise shipped there is eligible for drawback. Imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 191.152 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed under this subpart because of the exportation or destruction of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported or destroyed on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within

the bonded period, as provided in § 557(c) of the Act, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and proof of destruction is furnished to the satisfaction of the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied (see 19 U.S.C. 1558).

§ 191.153 Continuous Customs custody.

(a) Merchandise released under an importer's bond and returned. Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the appropriate Customs office shall not be deemed to be in the continuous custody of Customs officers.

(b) Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS). Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers.

(c) Merchandise released from warehouse. For the purpose of this subpart, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when estimated duty has been deposited and the appropriate Customs

office has authorized the withdrawal of the merchandise.

(d) Merchandise not warehoused, examined elsewhere than in public stores. (1) General rule. Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) Merchandise upon the wharf. Merchandise which remains on the wharf by permission of the appropriate Customs office shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

§ 191.154 Filing the entry.

(a) Direct export. At least 6 working hours before lading the merchandise on which drawback is claimed under this subpart, the importer or the agent designated by him in writing shall file with the drawback office a direct export drawback entry on Customs Form 331 in duplicate.

(b) Merchandise transported to another port for exportation. The importer of merchandise to be transported to another port for exportation shall file in triplicate with the drawback office an entry naming the transporting conveyance,

route, and port of exit. The drawback office shall certify one copy and forward it to the Customs office at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 191.155 Merchandise withdrawn from warehouse for exportation.

The regulations in part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

§ 191.156 Bill of lading.

(a) Filing. In order to complete the claim for drawback under this subpart, a bill of lading covering the merchandise described in the drawback entry (Customs Form 331) shall be filed within 2 years after the merchandise is exported.

(b) Contents. The bill of lading shall either show that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making the claim is authorized to do so.

(c) Limitation of the bill of lading. The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) Inability to produce bill of lading. When a required

bill of lading cannot be produced, the person making the drawback entry may request the drawback office, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of his right to make the drawback entry as may be available. The request shall be granted if the drawback office is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the drawback office is not so satisfied, such office shall transmit the request and its accompanying evidence to the Office of Field Operations, Customs Headquarters, for final determination.

(e) Extracts of bills of lading. Drawback offices may issue extracts of bills of lading filed with drawback claims.

§ 191.157 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.76 of this part.

§ 191.158 Procedures.

When the drawback claim has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case

of transportation and exportation, the drawback office shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback entries shall be liquidated in accordance with the provisions of § 191.81 of this part.

§ 191.159 Amount of drawback.

Drawback due under this subpart shall not be subject to the deduction of 1 percent.

Subpart P - Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 191.161 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

§ 191.162 Procedure.

The export procedure shall be the same as that provided in § 191.42 except that the claimant must be the importer and as otherwise provided in this subpart.

§ 191.163 Documentation.

(a) Entry. Customs Form 331 shall be used to claim drawback under this subpart.

(b) Documentation. The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional proof that the drawback office requires to establish that the merchandise is unmerchantable.

§ 191.164 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

§ 191.165 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

§ 191.166 Destruction of merchandise.

(a) Action by the importer. A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 331.

(b) Action by Customs. Distilled spirits, wine, or beer returned to Customs custody at the place approved by the drawback office where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify

the destruction on Customs Form 3499.

§ 191.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing entries under § 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 191.168 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, prior to the expiration of the 90-day period, the drawback office grants an extension of not more than 90 days.

Subpart Q - Substitution of Finished Petroleum Derivatives

§ 191.171 General; Drawback allowance.

(a) General. Section 313(p), of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback on the basis of qualified articles which consist of either imported duty-paid petroleum derivatives, or petroleum derivatives manufactured or produced in the United States and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)).

(b) Allowance of drawback. Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

§ 191.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) Qualified article. "Qualified article" means an article described in headings 2707, 2708, 2710 through 2715, 2901, 2902, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of headings 3901 through 3914, the definition is limited as those headings apply to liquids, pastes, powders, granules and flakes.

(b) Same kind and quality article. "Same kind and quality article" means an article which is commercially interchangeable with, or which is referred to under the same 8-digit classification of the HTSUS as, the article to which it is compared. (For example, unleaded gasoline and jet fuel (naphtha or kerosene-type), both falling under the same HTSUS classification (2710.00.15) would be considered same kind and quality articles because they fall under the same 8 digit HTSUS classification, even though they are not "commercially interchangeable".)

(c) Exported article. "Exported article" means an article

which has been exported and is the qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

§ 191.173 Imported duty-paid derivatives (no manufacture).

When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) Imported duty-paid merchandise. The imported duty-paid merchandise designated for drawback must be a "qualified article" as defined in § 191.172(a) of this subpart;

(b) Exported article. The exported article on which drawback is claimed must be an "exported article" as defined in § 191.172(c) of this subpart;

(c) Exporter. The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) Time of export. The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) Amount of drawback. The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article which serves as the basis for drawback.

§ 191.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).

When the basis for drawback under 19 U.S.C. 1313(p) is petroleum derivatives which were manufactured or produced in the United States and qualify for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) Merchandise. The merchandise which is the basis for drawback under 19 U.S.C. 1313(p) must:

(1) Have been manufactured or produced as described in 19 U.S.C. 1313(a) or (b) from crude petroleum or a petroleum derivative; and

(2) Be a "qualified article" as defined in § 191.172(a) of this subpart;

(b) Exported article. The exported article on which drawback is claimed must be an "exported article" as defined in § 191.172(c) of this subpart;

(c) Exporter. The exporter of the exported article must have either:

(1) Manufactured or produced the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from a manufacturer or producer described in 19 U.S.C. 1313(a) or (b) the qualified article in at least the quantity of the exported article;

(d) Manufacture in specific facility. The qualified article must have been manufactured or produced in a specific petroleum refinery or production facility which must be identified;

(e) Time of export. The exported article must be exported either:

(1) During the period provided for in the manufacturer's or producer's specific manufacturing drawback ruling (see § 191.8 of this part) in which the qualified article is manufactured or produced; or

(2) Within 180 days after the close of the period in which the qualified article is manufactured or produced; and

(f) Amount of drawback. The amount of drawback payable may not exceed the amount of drawback which would be attributable to the article manufactured or produced under 19 U.S.C. 1313(a) or (b) which serves as the basis for drawback.

§ 191.175 Drawback claimant; maintenance of records.

(a) Drawback claimant. A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of that article. Any of these

persons may designate another person to file the drawback claim.

(b) Certificate of manufacture and delivery or delivery. A drawback claimant under 19 U.S.C. 1313(p) must provide a certificate of manufacture and delivery or a certificate of delivery, as applicable, establishing the drawback eligibility of the articles for which drawback is claimed.

(c) Maintenance of records. The manufacturer, producer, importer, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

§ 191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) Applicability. The general procedures for filing drawback claims shall be applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specifically provided for in this section.

(b) Administrative efficiency, frequency of claims, and restructuring of claims. The procedures regarding administrative efficiency, frequency of claims, and restructuring of claims (as applicable, see **§** 191.53 of this part) shall apply to claims filed under this subpart.

(c) Imported duty-paid derivatives (no manufacture). When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum (not articles manufactured under 19 U.S.C. 1313(a) or (b)), claims under this subpart may be paid and liquidated if:

(1) The claim is filed on Customs Form 331 and the letter "P" is marked thereon; and

(2) The claimant provides a certification stating the basis (such as company records, or customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported within 180 days of entry of the designated, imported merchandise;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS tariff classification;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

(d) Derivatives manufactured under 19 U.S.C. 1313(a) or (b). When the basis for drawback under 19 U.S.C. 1313(p) is articles manufactured under 19 U.S.C. 1313(a) or (b), claims under this section may be paid and liquidated if:

(1) The claim is filed on Customs Form 331 and the

letter "P" is marked in block 15 thereof;

(2) All documents required to be filed with a manufacturing claim under 19 U.S.C. 1313(a) or (b) are filed with the claim;

(3) The claim identifies the specific refinery or production facility at which the derivatives were manufactured or produced;

(4) The claim states the period of manufacture for the derivatives; and

(5) The claimant provides a certification stating the basis (such as company records or a customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported during the manufacturing period for the qualified article or within 180 days after the close of that period;

(ii) The 8-digit HTSUS tariff classification of the qualified article and the exported article is the same;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

Subpart R - Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 191.181 Drawback allowance.

The fourth proviso of § 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), provides for drawback on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, storage or destruction (except destruction of distilled spirits, wines, and fermented malt liquors), provided there is compliance with the regulations of this subpart.

§ 191.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.181 shall be given status as zone-restricted merchandise on proper application (see § 146.44 of this chapter).

§ 191.183 Articles manufactured or produced in the United States.

(a) Procedure for filing documents. Except for the evidence of exportation procedure, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with

the use of domestic tax-paid alcohol.

(b) Notice of transfer. (1) Proof of export. The notice of zone transfer on Customs Form 7514 shall be in place of the documents under subpart G of this part to establish the exportation.

(2) Filing procedures. The notice of transfer, in triplicate, shall be filed with the drawback office where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) Contents of notice. Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number; and

(iv) Name of the transferor.

(c) Action of drawback office on the notice of transfer. The drawback office shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign trade zone.

(d) Action of foreign trade zone operator. After articles

have been received in the zone, the zone operator shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback claim.

(e) Drawback entries. Drawback entries shall be filed on Customs Form 331 to indicate that the merchandise was transferred to a foreign trade zone. The "Declaration of Exportation" shall be modified as follows:

DECLARATION OF TRANSFER TO A FOREIGN TRADE ZONE

I,_____(member of firm, officer representing corporation, agent, or attorney), of _____, declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption.

Dated: _____.

_____,
Transferor or agent.

§ 191.184 Merchandise transferred from continuous Customs custody.

(a) Procedure for filing claims. The procedure described in subpart O of this part shall be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) Drawback entry. Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office a direct export drawback entry on Customs Form 331 in duplicate. The drawback office shall forward one copy of Customs Form 331 to the zone operator at the zone.

(c) Certification by zone operator. After the merchandise has been received in the zone, the zone operator shall certify on the copy of Customs Form 331 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 331 to the drawback office in place of the bill of lading required by § 191.156.

(d) Modification of drawback entry. (1) Indication of transfer. Customs Form 331 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) Endorsement. The transferor or person designated by the transferor shall endorse Customs Form 331 as follows, for execution by the foreign trade zone operator:

CERTIFICATION OF FOREIGN TRADE ZONE OPERATOR

The merchandise described in the entry was received from _____ on _____, 19____; in Foreign Trade Zone No.

_____, (City and State) Exceptions: _____.
_____ (Name and title)
By _____ (Name of operator)

(3) Transferor's declaration. The transferor shall declare on Customs Form 331 as follows:

TRANSFEROR'S DECLARATION

I, _____ of the firm of _____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No.____, located at _____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is in the same quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated:

_____
(Transferor)

§ 191.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, or found to be defective as of the time of importation.

(a) Procedure for filing claims. The procedures described in subpart C of this part relating to unused merchandise drawback, and in subpart D of this part relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for unused merchandise drawback and merchandise that does not conform to sample or specification, is shipped without consent of the consignee, or is found to be defective as of the

time of importation.

(b) Drawback entry. Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office an entry on Customs Form 331 in duplicate. The drawback office shall forward one copy of Customs Form 331 to the zone operator at the zone.

(c) Certification by zone operator. After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 331 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the declarations provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 331 to the drawback office in place of the bill of lading required by § 191.156.

(d) Modification of drawback entry. (1) Indication of transfer. Customs Form 331 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) Endorsement. The transferor or person designated by the transferor shall endorse Customs Form 331 as follows, for execution by the foreign trade zone operator:

CERTIFICATION OF FOREIGN TRADE ZONE OPERATOR

The merchandise described in this entry was received from _____ on _____, 19 ____, in Foreign Trade Zone No. _____, _____ (City and State). Exceptions: ___ _____.

_____ (Name of operator)
By _____ (Name and title)

(3) Transferor's declaration. The transferor shall declare on Customs Form 331 as follows:

TRANSFEROR'S DECLARATION

I, _____, of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at _____ _____ (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated:

_____
Transferor

§ 191.186 Person entitled to claim drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

Subpart S - Drawback Compliance Program

§ 191.191 Purpose.

This subpart sets forth the requirements for the Customs drawback compliance program in which claimants and other parties in interest, including Customs brokers, may participate after being certified by Customs. Participation in the program is

voluntary. Under the program, Customs is required to inform potential drawback claimants and related parties clearly about their rights and obligations under the drawback law and regulations. Reduced penalties and/or warning letters may be issued once a party has been certified for the program, and is in general compliance with the appropriate procedures and requirements thereof.

§ 191.192 Certification for compliance program.

(a) General. A party may be certified as a participant in the drawback compliance program after meeting the core requirements established under the program, or after negotiating an alternative drawback compliance program suited to the needs of both the party and Customs. Certification requirements shall take into account the size and nature of the party's drawback program, the type of drawback claims filed, and the volume of claims filed. Whether the party is a drawback claimant, a broker, or one that provides data and documentation on which a drawback claim is based, will also be considered.

(b) Core requirements of program. In order to be certified as a participant in the drawback compliance program or negotiated alternative drawback compliance program, the party must be able to demonstrate that it:

(1) Understands the legal requirements for filing claims, including the nature of the records that are required to

be maintained and produced and the time periods involved;

(2) Has in place procedures that explain the Customs requirements to those employees involved in the preparation of claims, and the maintenance and production of required records;

(3) Has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to Customs;

(4) Has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;

(5) Has in place a record maintenance program approved by Customs regarding original records, or if approved by Customs, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying Customs of variances in, or violations of, the drawback compliance or other alternative negotiated drawback compliance program, and for taking corrective action when notified by Customs of violations and problems regarding such program.

(c) Broker certification. A Customs broker may be certified as a participant in the drawback compliance program only on behalf of a given claimant (see § 191.194(b)). To do so, a Customs broker who is employed to assist a claimant in filing for drawback must be able to demonstrate, for and on behalf of such claimant, conformity with the core requirements of the

drawback compliance program as set forth in paragraph (b) of this section. The broker shall ensure that the claimant has the necessary documentation and records to support the drawback compliance program established on its behalf, and that claims to be filed under the program are reviewed by the broker for accuracy and completeness.

§ 191.193 Application procedure for compliance program.

(a) Who may apply. Claimants and other parties in interest may apply for participation in the drawback compliance program. This includes any person, corporation or business entity that provides supporting information or documentation to one who files drawback claims, as well as Customs brokers who assist claimants in filing for drawback. Program participants may further consist of importers, manufacturers or producers, agent-manufacturers, complementary recordkeepers, subcontractors, intermediate parties, and exporters.

(b) Place of filing. An application in letter format containing the information as prescribed in paragraphs (c) and (d) of this section shall be submitted to any drawback office. However, in the event the applicant is a claimant for drawback, the application shall be submitted to the drawback office where the claims will be filed.

(c) Letter of application; contents. A party requesting certification to become a participant in the drawback compliance

program shall file with the applicable drawback office a written application in letter format, signed by an individual authorized to sign drawback documents (see § 191.6 of this part). The detail required in the application shall take into account the size and nature of the applicant*s drawback program, the type of drawback claims filed, and the dollar value and volume of claims filed. However, the application shall contain at least the following information:

(1) Name of applicant, address, IRS identification number, and the type of business in which engaged, as well as the name(s) of the individual(s) designated by the applicant to be responsible for compliance under the program;

(2) A description of the nature of the applicant's drawback program, including the type of drawback in which involved (such as, manufacturing, or unused or rejected merchandise), and the applicant's particular role(s) in the drawback claims process (such as claimant and/or importer, manufacturer or producer, agent-manufacturer, complementary recordkeeper, subcontractor, intermediate party (possessor or purchaser), or exporter (destroyer)); and

(3) Size of applicant's drawback program. (For example, if the applicant is a claimant, the number of claims filed over the previous 12-month period should be included, along with the number estimated to be filed over the next 12-month period, and the estimated amount of drawback to be claimed

annually. Other parties should describe the extent to which they are involved in drawback activity, based upon their particular role(s) in the drawback process; for example, manufacturers should explain how much manufacturing they are engaged in for drawback, such as the quantity of drawback product produced on an annual basis, as established by the certificates of manufacture and delivery they have executed.)

(d) Application package. Along with the letter of application as prescribed in paragraph (c) of this section, the application package must include a description of how the applicant will ensure compliance with statutory and regulatory drawback requirements. This description may be in the form of a booklet or set forth otherwise. The description must include at least the following:

(1) The name and title of the official in the claimant*s organization who is responsible for oversight of the claimant*s drawback program;

(2) If the applicant is a manufacturer and the drawback involved is manufacturing drawback, a copy of the letter of notification of intent to operate under a general manufacturing drawback ruling or the application for a specific manufacturing drawback ruling (see §§ 191.7 and 191.8 of this part), as appropriate, if such letter of notification has not yet been acknowledged or application has not yet been approved;

(3) A description of the applicant*s drawback record-

keeping program, including the retention period and method (for example, paper, electronic, etc.);

(4) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(5) A description of the applicant's specific procedures for:

(i) How drawback claims are prepared (if the applicant is a claimant); and

(ii) How the applicant will fulfill any requirements under the drawback law and regulations applicable to its role in the drawback program;

(6) A description of the applicant's procedures for notifying Customs of variances in, or violations of, its drawback compliance program or negotiated alternative drawback compliance program, and procedures for taking corrective action when notified by Customs of violations or other problems in such program; and

(7) A description of the applicant's procedures for annual review to ensure that its drawback compliance program meets the statutory and regulatory drawback requirements and that

Customs is notified of any modifications from the procedures described in this application.

§ 191.194 Action on application to participate in compliance program.

(a) Review by applicable drawback office.

(1) General. It is the responsibility of the drawback office where the drawback compliance application package is filed to coordinate its decision making on the package both with Customs Headquarters and with the other field drawback offices as appropriate. Customs processing of the package will consist of the review of the information contained therein as well as any additional information requested (see paragraph (a)(2) of this section).

(2) Criteria for Customs review. The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in § 191.193(c) and (d) of this subpart. Based on the information submitted on and with the application and any information so requested, and based on the applicant*s record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant*s record with Customs shall include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant*s past drawback claims; and

(iii) Whether accelerated payment of drawback or any other drawback privilege was previously revoked or suspended.

(b) Approval. Certification as a participant in the drawback compliance program will be given to applicants whose applications are approved under the criteria in paragraph (a)(2) of this section. The applicable drawback office will give written notification to an applicant of its certification as a participant in the drawback compliance program. A Customs broker obtaining certification for a drawback claimant will be sent written notification on behalf of such claimant, with a copy of the notification also being sent to the claimant.

(c) Benefits of participation in program.

(1) Alternative to penalties; written notice. When a party that has been certified as a participant in the drawback compliance program and is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a) (see § 191.62(b) of this part), Customs shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under § 1593a, issue a written notice of the violation to the party.

Repeated violations by a participant, including a Customs broker, may result in the issuance of penalties and the removal of certification under the program until corrective action, satisfactory to Customs, is taken.

(d) Denial. If certification as a participant in the drawback compliance program is denied to an applicant, the applicant shall be given written notice by the applicable drawback office, specifying the grounds for such denial, together with any action that may be taken to correct the perceived deficiencies, and informing the applicant that such denial may be appealed to the appropriate drawback office and then appealed to Customs Headquarters.

(e) Proposed revocation. If the participant commits repeated violations of its drawback compliance program or negotiated alternative program, the applicable drawback office, by written notice, may propose to revoke certification from the participant, until corrective action, satisfactory to Customs, is taken to prevent such violations. The written notice will describe the cause for the proposed revocation and the corrective actions required for re-certification.

(f) Appeal of denial or challenge to proposed revocation. A party may appeal a denial or challenge a proposed revocation of certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of the date of such denial or proposed revocation, with the applicable drawback

office. A denial of an appeal or challenge to a proposed revocation may itself be appealed to Customs Headquarters within 30 days of receipt of the applicable drawback office's decision. The 30-day period for appeal or challenge with the applicable drawback office and/or with Customs Headquarters may be extended for good cause, upon written request by the applicant for such extension filed with the applicable drawback office or with Customs Headquarters, as the case may be, within the 30-day period.

§ 191.195 Combined application for certification in Drawback Compliance Program and Drawback Privileges.

An applicant for certification in the drawback compliance program may also, in the same application, apply for the drawback privileges provided for in subpart I of this part (waiver of prior notice of intent to export and accelerated payment of drawback). Alternatively, an applicant may separately apply for certification in the drawback compliance and one or both privilege(s). In the former instance, the intent to apply for certification and one or both privileges must be clearly stated. In all instances, all of the requirements for certification and the privilege(s) applied for must be met (for example, in a combined application for certification in the drawback compliance program and both privileges, all of the information required for certification and each privilege, all required sample documents for certification and each privilege, and all required

certifications must be included in and with the application).

Appendix A to Part 191 - General Manufacturing Drawback Rulings

I. General Instructions.

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person who can comply with the conditions of any one of these rulings may notify a Customs drawback office in writing of its intention to operate under the ruling. Such a letter of notification shall include the following information:

1. Name and address of operator;

2. Factories which will operate under the general ruling;

3. If a business entity, the names of officers or other persons legally authorized to bind the corporation who will sign drawback documents on behalf of operator;

4. Description of the merchandise and articles, unless specifically described in the general ruling;

5. For the general ruling for manufacturing drawback under § 1313(a) and the general ruling for manufacturing drawback (agents under § 1313(b)), if the drawback office has doubts as to whether the conversion of the imported merchandise into the exported articles is a manufacturing or production operation, the operator will be asked to give details of the operation.

B. These general manufacturing drawback rulings supersede general "contracts" previously published under the following

Treasury Decisions (T.D.'s): 81-74, 81-92, 81-181, 81-234, 81-300, 83-59, 83-73, 83-123, 85-110.

Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous "contract".

II. General Drawback Manufacturing Ruling Under 19 U.S.C. 1313(a).

A. Imported Merchandise or Drawback Products[1] Used.

([1]Drawback products are those produced in the United States in accordance with the drawback law and regulations.) Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on which Drawback will be Claimed.

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. Process Of Manufacture Or Production.

The imported merchandise or drawback products will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

D. By-Products.

1. Relative Values.

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If by-products are produced records will be

maintained of the market value of each product or by-product at the time it is first separated in the manufacturing process.

2. Appearing-in method.

The appearing in basis may not be used if by-products are produced unless all products are valued identically.

E. Loss or Gain.

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

F. Tradeoff.

The use of any domestic merchandise acquired in exchange for imported merchandise that is of the same kind and quality as the imported merchandise, meeting specifications set forth in the application by the operator for a determination of same kind and quality (see § 191.11(c)), shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings (see 19 CFR 191.11).

G. Stock In Process.

Stock in process does not result; or if it does result, details will be given in claims as filed, and it will not be included in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.

H. Waste.

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

I. Procedures And Records Maintained.

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise[2] used in producing the exported articles. ([2] If claims are to be made on an "appearing in" basis, the remainder of the sentence should read "appearing in the exported articles.") To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise.

J. Inventory Procedures.

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback.

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that merchandise which the value of the waste would replace.

L. General requirements.

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by

succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(a), part 191 of the Customs Regulations and this general ruling.

III. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) For Agents.

Operators under this general ruling must comply with T.D.s 55027(2) and 55207(1), 19 U.S.C. 1313(b), and 19 CFR part 191 (see particularly, § 191.9).

A. Name and Address of Principal.

B. Imported Merchandise or Drawback Products, or Other (Substituted) Merchandise, Used in Manufacture or Production.

C. Articles Manufactured or Produced From the Imported Merchandise or Drawback Products or Other (Substituted) Merchandise Used in Manufacture or Production.

D. Process of Manufacture or Production.

The imported merchandise or drawback products or other substituted merchandise will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

E. Procedures And Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the merchandise received from the principal;
2. The date such merchandise was received from the principal;
3. The date the merchandise received from the principal was used in manufacture or production, and the identity and specifications of the articles produced thereby; and
4. The date the articles produced were returned to the principal.

F. General Requirements.

The operator will:

1. Comply fully with the terms of this general ruling when manufacturing or producing articles for account of principal under the principal's general manufacturing drawback ruling or specific manufacturing drawback ruling, as appropriate;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim

predicated in whole or in part upon this general ruling;

4. Keep its notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates the claims any changes in the number or locations of the operator's offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

IV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) For Component Parts.

A. Same Kind and Quality (Parallel Columns).

Imported Merchandise or Drawback Products[1] to be Designated as the Basis	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which

for Drawback on the Exported Products.	will be Used in the Production of the Exported Products.

([1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

Component parts identified by individual part numbers.	Component parts identified with the same individual part numbers as those in the column immediately to the left hereof.

The designated components will have been manufactured in accordance with the same specifications and from the same materials, and identified by the same part number as the substituted components. Further, the designated and substituted components are used interchangeably in the manufacture of the exported articles upon which drawback will be claimed. Specifications or drawings will be maintained and made available for Customs officers. The imported merchandise designated on drawback claims will be so similar to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in market value resulting from factors other than

quality will not affect the drawback.

B. Exported Articles on which Drawback will be Claimed.

The exported articles will have been manufactured in the United States using components described in the parallel columns above.

C. General Statement.

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production.

The components described in the parallel columns will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

E. By-Products.

Not applicable.

F. Waste.

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. Tradeoff.

The use of any domestic merchandise acquired in exchange for

imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

H. Procedures And Records Maintained.

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles ([2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced.");

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced[3] the exported articles.

([3] The date of production is the date an article is completed.)

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable

without proof of compliance.

I. Inventory Procedures.

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

J. Basis of Claim for Drawback.

Drawback will be claimed on the quantity of eligible components used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible components that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible components used to produce the exported articles less the amount of those components which the value of the waste would replace.

K. General Requirements.

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all

reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

V. General Manufacturing Drawback Ruling under 19 U.S.C. 1313(b) for Orange Juice.

A. Same Kind and Quality (Parallel Columns).

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which Will be Used in the Production of the Exported Products.

Concentrated orange juice for manufacturing (of not less than 55° Brix) as defined in the standard of identity of the Food and Drug Administration (21 CFR 146.53) which meets the Grade A standard of the U.S. Dept. of Agriculture (7 CFR 52.1557, Table IV).	Concentrated orange juice for manufacturing as described in the left-hand parallel column.

([1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

The imported merchandise designated on drawback claims will be so similar in quality to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on which Drawback will be Claimed.

1. Orange juice from concentrate (reconstituted juice).

2. Frozen concentrated orange juice.

3. Bulk concentrated orange juice.

C. General Statement.

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production.

1. Orange juice from concentrate (reconstituted juice). Concentrated orange juice for manufacturing is reduced to a desired 11.8° Brix by a blending process to produce orange juice from concentrate. The following optional blending processes may be used:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils, flavoring components, and water; or

iii. The concentrate is blended with water and is heat treated to reduce the enzymatic activity and the number of viable microorganisms.

2. Frozen concentrated orange juice.

Concentrated orange juice for manufacturing is reduced to a desired degree Brix of not less than 41.8° Brix by the following optional blending processes:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils and flavoring components and water.

3. Bulk concentrated orange juice.

Concentrated orange juice for manufacturing is blended with essential oils and flavoring components which would enable another processor such as a dairy to prepare finished frozen concentrated orange juice or orange juice from concentrate by merely adding water to the (intermediate) bulk concentrated orange juice.

E. By-Products, Waste, Loss or Gain.

Not applicable.

F. Tradeoff.

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

G. Procedures And Records Maintained.

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported

articles ([2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced.");

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the designated merchandise to produce articles. During the same 3-year period, the operator produced[3] the exported articles.

([3] The date of production is the date an article is completed.)

To obtain drawback it must be established that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. No drawback is payable without proof of compliance.

G. Inventory Procedures.

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

I. Basis of Claim for Drawback.

The basis of claim for drawback will be the quantity of concentrated orange juice for manufacturing used in the production of the exported articles. It is understood that when

fresh orange juice is used as “cutback”, it will not be included in the “pound solids” when computing the drawback due.

J. General requirements.

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

VI. General Manufacturing Drawback Ruling under 19 U.S.C.

1313(b) for Piece Goods.

A. Same kind and Quality (Parallel Columns).

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Piece goods	Piece goods

([1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under 19 U.S.C. 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

The piece goods used in manufacture will be the same kind and quality as the piece goods designated as the basis of claim for drawback, and are used interchangeably without change in manufacturing processes or resultant products, by-products, or wastes. Some tolerances between imported-designated piece goods and the used-exported piece goods will be permitted to accommodate variations which are normally found in piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for piece goods of the same kind and quality as follows:

1. A 4% weight tolerance so that the piece goods used in

manufacture will be not more than 4% lighter or heavier than the imported piece goods which will be designated;

2. A tolerance of 4% in the aggregate thread count per square inch so that the piece goods used in manufacture will have an aggregate thread count within 4%, more or less of the aggregate thread count of the imported piece goods which will be designated. In each case, the average yarn number of the domestic piece goods will be the same or greater than the average yarn number of the imported piece goods designated, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, i.e., print cloth for print cloth, gingham for gingham, greige for greige, dyed for dyed, bleached for bleached, etc. The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65% cotton and 35% dacron will be designated against the use of piece goods shown to contain 65% cotton and 35% dacron. The actual fiber composition may vary slightly from that described on the invoice or other acceptance of the fabric as having the composition described on documents in accordance with trade practices. The substituted piece goods used in the manufacture of articles for exportation with drawback will be so similar in quality to the imported piece goods designated for the basis of allowance of drawback, that the piece goods used, if

imported, would have been subject to the same or greater amount of duty as was paid on the imported designated piece goods. Differences in value resulting from factors other than quality, as for example, price fluctuations, will not preclude an allowance of drawback.

B. Exported Articles on which Drawback will be Claimed.

Finished piece goods.

C. General Statement.

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.’s. 55027(2) and 55207(1).

D. Process of Manufacture or Production.

Piece goods are subject to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,
5. A combination of the above, or
6. Any additional finishing processes.

E. By-Products.

Not applicable.

F. Waste.

Rag waste may be incurred. The operator's records shall show the quantity of rag waste, if any, and its value. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it shall be assumed in liquidation that such rag waste constituted 2% of the piece goods put into the finishing processes.

G. Shrinkage, Gain, and Spoilage.

The operator's records shall show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any.

H. Tradeoff.

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures And Records Maintained.

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles ([2] If claims are to be made on an "appearing in" basis,

the remainder of this sentence should read "appearing in the exported articles produced.");

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced[3] the exported articles.

([3] The date of production is the date an article is completed.)

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures.

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for drawback.

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods

that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

L. General Requirements.

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees

concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

VII. General Manufacturing Drawback Ruling under 19 U.S.C. 1313(b) for Steel.

A. Same kind and Quality (Parallel Columns).

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Steel of one general class, e.g., an ingot, falling within one SAE, AISI, or ASTM[2] specification, and if the specification contains one or more grades falling within	Steel of the same general class, specification, and grade as the steel in the column immediately to the left hereof.

([1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

one grade of the specification.

([2] Standards set by the Society of Automotive Engineers (SAE), the American Iron and Steel Institute (AISI), or the American Society for Testing and Materials (ASTM).)

1. The duty-free or domestic steel used instead of the duty-paid steel will be interchangeable for manufacturing purposes with the duty-paid steel. To be interchangeable a steel must be able to be used in place of the substituted steel without any additional processing step in the manufacture of the article on which drawback is to be claimed.

2. Because the duty-paid steel that is to be designated as the basis for drawback is dutiable according to its value, the amount of duty can vary with its size (gauge, width, or length) or composition (e.g., chrome content). If such variances occur, designation will be by "price extra", and in no case will drawback be claimed in a greater amount than that which would have accrued to that steel used in manufacture of or appearing in the exported articles. Price extra is not available for coated or plated steel, covered in paragraph 5, infra, insofar as the coating or plating is concerned.

3. The duty-paid steel will be so similar in quality to the steel used to manufacture the articles on which drawback will be claimed that the steel so used, if imported, would be classifiable in the same tariff subheading number and at the same rate of duty as the duty-paid imported steel.

4. Any fluctuation in market value caused by a factor other than quality does not affect drawback.

5. If the steel is coated or plated with a base metal, in addition to meeting the requirements for uncoated or unplated steel set forth in the parallel columns, the base-metal coating or plating on the duty-free or domestic steel used in place of the duty-paid steel will have the same composition and thickness as the coating or plating on the duty-paid steel. If the coated or plated duty-paid steel is within a SAE, AISI, ASTM specification, any duty-free or domestic coated or plated steel covered by the same specification and grade (if two or more grades are in the specification) is considered to meet this criterion for “same kind and quality.”

B. Exported Articles on which Drawback will be Claimed.

The exported articles will have been manufactured in the United States using steels described in the parallel columns above.

C. General Statement.

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production.

The steel described in the parallel columns will be used to manufacture new and different articles (see 19 CFR 191.2(p)).

E. By-Products.

Not applicable.

F. Waste.

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain.

The operator will maintain records showing the extent of any loss or gain in net weight or measurement of the steel caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff.

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures And Records Maintained.

Records will be maintained to establish:

1. The identity and specifications of the designated

merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[3] used to produce the exported articles ([3] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced.");

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced[4] the exported articles.

([4] The date of production is the date an article is completed.)

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures.

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback.

Drawback will be claimed on the quantity of steel used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible steel that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of steel, drawback may be claimed on the quantity of eligible steel used to produce the exported articles less the amount of that steel which the value of the waste would replace.

L. General Requirements.

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession

or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

VIII. General Manufacturing Drawback Ruling under 19 U.S.C. 1313(b) for Sugar.

A. Same Kind and Quality (Parallel Columns).

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar	1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar

([1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

degrees.	degrees.
2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.	2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.

The sugars listed above test within three-tenths of a degree on the polariscope. Sugars in each column are completely interchangeable with the sugars directly opposite and designation will be made on this basis only. The designated sugar on which claims for drawback will be based will be so similar in quality to the sugar used in manufacture of the products exported with drawback that the sugar used in manufacture would, if imported, be subject to the same amount of duty paid on a like quantity of designated sugar. Differences in value resulting from factors other than quality, such as market fluctuation, will not affect the allowance of drawback.

B. Exported Articles on which Drawback will be Claimed.

Edible substances (including confectionery) and/or beverages and/or ingredients therefor.

C. General Statement.

The operator manufactures for its own account. The operator may produce articles for the account of another or another manufacturer may produce for the operator's account under contract within the principal and agency relationship outlined in

T.D.'s 55027(2) and 55207(1).

D. Process of Manufacture or Production.

The sugars are subjected to one or more of the following operations to form the desired product(s):

1. Mixing with other substances,

2. Cooking with other substances,

3. Boiling with other substances,

4. Baking with other substances,

5. Additional similar processes

E. By-Products.

Not applicable.

F. Waste.

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of sugar appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain.

The operator will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff.

The use of any domestic merchandise acquired in exchange for

imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures And Records Maintained.

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles ([2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced.");

3. That, within 3 years after receiving the designated merchandise at its factory, the operator used the merchandise to produce articles. During the same 3-year period, the operator produced[3] the exported articles.

([3] The date of production is the date an article is completed.)

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The operator's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable

without proof of compliance.

J. Inventory Procedures.

The operator's inventory records will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback.

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements.

The operator will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all

reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

IX. General Drawback Ruling under 19 U.S.C. 1313(b) for Raw Sugar.

Drawback may be allowed under 19 U.S.C. 1313(b) upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special requirements:

A. The drawback allowance shall not exceed 99 percent of the duty paid on a quantity of raw sugar designated by the

refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained as provided in this general rule.

B. The refined sugars and sirups shall have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 3 years after the date on which designated sugar was received by the refiner, and shall have been exported within 5 years from the date of importation of the designated sugar.

C. All granulated sugar testing by the polariscope 99.5° and over shall be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5° shall be deemed soft refined sugar. All "blackstrap," "unfiltered sirup," and "final molasses" shall be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) shall be of the same kind and quality as that used in the manufacture of the exported refined sugar or sirup and shall have been used within 3 years after the date on which it was received by the refiner. Duty-paid sugar which has been used at a plant of a refiner within 3 years after the date on which it was received by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

E. For the purpose of distributing the drawback, relative

values shall be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract shall be deemed the time of separation of the sugars and sirups covered by such abstract.

F. The sucrose allowance per pound on hard refined (granulated) sugar established by an abstract, as provided for in this general ruling, shall be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by the abstract.

G. The sucrose allowance per gallon on sirup established by an abstract, as provided for in this general ruling, shall be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special manufacturing drawback ruling.

H. As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records shall show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, and the settlement polarization. Such records covering imported sugar shall show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

I. The melt records shall show the date of melting, the number of pounds of each lot of raw sugar melted, and the full analysis at melting.

J. There shall be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

K. The sirup manufacture records shall show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels and the refinery serial manufacture number.

L. The refined sugar stock records shall show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each shall be shown.

M. Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, shall be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records provided for and shown in the abstract, as provided for in this general

ruling, from such records. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the drawback office immediately after such marking a statement showing the date of manufacture, the refinery manufacture number, the number of packages marked, and the quantity of sugar or sirup contained therein. No drawback shall be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers shall be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking shall be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records shall show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

N. An abstract from the foregoing records covering manufacturing periods of not less than 1 month nor more than 3 months, unless a different period shall have been authorized, shall be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract shall be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract shall be in the form described in Treasury

Decision 83-59.

O. The refiner shall file with each abstract a statement, in the form described in Treasury Decision 83-59.

P. At the end of each calendar month the refiner shall furnish to the drawback office a statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

Q. The sucrose allowance to be applied to the various products based on the abstract and statement provided for in this general ruling shall be in accordance with the example set forth in Treasury Decision 83-59.

R. Certificates of delivery under this general ruling shall be in the form described in Treasury Decision 83-59.

S. Drawback claims under this general ruling shall be in the form described in Treasury Decision 83-59.

T. General Statement. The refiner manufactures for its own account. The refiner may produce articles for the account of another or another manufacturer may produce for the refiner's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1).

U. Waste. No drawback is payable on any waste which results from the manufacturing operation. Unless drawback claims are based on the "appearing in" method, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from

manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

V. Loss or Gain. The refiner will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

W. Tradeoff. The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality requirements provided for in this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

X. Procedures And Records Maintained. Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles ([2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."); and

3. That, within 3 years after receiving the designated merchandise at its factory, the refiner used the designated merchandise to produce articles. During the same 3-year period,

the refiner produced[3] the exported articles.

([3] The date of production is the date an article is completed.)

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. The refiner's records establishing its compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

Y. General requirements. The refiner will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this

general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

Appendix B to Part 191 - Sample Formats for Applications for Specific Manufacturing Drawback Rulings

These sample formats for applications for specific manufacturing drawback rulings are not rulings until reviewed and approved by Customs Headquarters. A specific manufacturing drawback ruling consists of the application plus the letter of acceptance, as provided in 19 CFR 191.8. In these application formats, remarks in parentheses and footnotes are for explanatory purposes only and should not be copied. Other material should be quoted directly in the applications.)

FORMAT FOR SAMPLE 1313(a) & (b) APPLICATION

COMPANY LETTERHEAD (Optional)

U.S. Customs Service
Entry and Carrier Rulings Branch
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Dear Sir:

We, (Applicant's Name), a (State, e.g. Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations

qualify for drawback under title 19, United States Code, §§ 1313(a) & (b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

CORPORATE OFFICERS

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally

authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;

New York, NY;

Miami, FL;

New Orleans, LA;

Houston, TX;

Long Beach, CA;

Chicago, IL;

San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:

1. Who will be the importer of the designated merchandise? (If the applicant will not always be the importer of the

designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A) or an application for a specific manufacturing drawback ruling (see § 191.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).))

(Since the permission to grant use of the accelerated payment procedure rests with the Customs office with which claims will be filed, do not include any reference to that procedure in this application.)

PROCEDURES UNDER SECTION 1313(b)

(PARALLEL COLUMNS - "SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DUTY-PAID, DUTY-FREE OR DOMESTIC

DRAWBACK PRODUCTS[2] TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS	MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS
1.	1.
2.	2.
3.	3.

([2] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the "same kind and quality" of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to

be substituted for the imported merchandise is the "same kind and quality". "Same kind and quality" does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character ("same kind") and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article ("same quality"). In order to enable Customs to rule on "same kind and quality", the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the "same kind and quality" statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, e.g., ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; etc. Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often

characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the "same kind and quality" determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, e.g. CAS number; Color Index Number, etc.)
(In order to expedite the specific manufacturing drawback ruling process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)
(The descriptions of the "same kind and quality" merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(b) is not allowable except where a manufacture or production exists. A manufacture or production exists when a "new and different article emerges having a distinctive name, character, or use", or when an article is made fit for a particular use (see 19 CFR 191.2(p); see also Anheuser-Busch Brewing Assoc. v. United States, 207 U.S. 556 (1907); United States v. International Paint Co., 35 CCPA 87 (1948), et al.). In order to obtain drawback under § 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a "new and different article" has been formed. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by

which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

BY-PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce

100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of by-products, but is not allowable on exports of valuable waste. In making this distinction between by-product or valuable waste, the applicant should address the following significant elements: (1) the nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more

products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The BY-PRODUCT section consists of two sub-sections: Relative Values and Producibility. If no by-products result from your operation state "Not Applicable" for the entire section. If by-products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your by-product operation state "Not Applicable" for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is

based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process necessarily reduces the quantity of

imported material used in manufacture in a current lot or period, in that the amount manufactured in any given batch does not include the recycled merchandise going into the next batch. Therefore the amount of imported merchandise used in manufacture of exported articles is decreased.)

(If stock in process occurs, the application must include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

TRADEOFF

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provision has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual

percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;
2. The quantity of merchandise of the same kind and quality as the designated merchandise[3] we used to produce the exported articles ([3] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce.");
3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced[4] the exported articles. ([4] The date of production is the date an article is completed.)

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after

the importation of the imported merchandise.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED “SAME KIND AND QUALITY” WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g. within 120 days, but specific proof is preferable. Separate storage and

identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Failure to describe how the specific records will show receipt, use and export may be a ground to deny use of the accelerated payment procedure until completion of a satisfactory audit. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim

drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing in" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims

are made on the "Appearing In" basis. Drawback is payable on 99 percent of the duty paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. "Appearing In" may not be used if by-products are involved unless the applicant agrees to value all products identically.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article may be based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste will replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.25(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds

of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds "Used In" or the 90 pounds "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the "Appearing In"

basis, neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

PROCEDURES UNDER SECTION 1313(a)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED UNDER 1313(a)

(List the imported merchandise or drawback products)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

(If the merchandise used under § 1313(a) is not also used under § 1313(b), the sections entitled PROCESS OF MANUFACTURE OR PRODUCTION, BY-PRODUCTS, LOSS OR GAIN, and STOCK IN PROCESS should be included here to cover merchandise used under § 1313(a). However, if the merchandise used under § 1313(a) is also used under § 1313(b) these sections need not be repeated unless they differ in some way from the § 1313(b) descriptions.)

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise[5] we used in producing the exported articles ([5] If claims are to be made on an "appearing In" basis, the remainder of the sentence should read "appearing in the exported articles we produce.").

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise.

INVENTORY PROCEDURES

(This section must be completed separately from that set forth under the § 1313(b) portion of your application. The legal requirements under § 1313(a) differ from those under § 1313(b).) (Describe your inventory procedures and state how you will identify the imported merchandise from the time it is received at your factory until it is incorporated in the articles to be exported. Also describe how you will identify the finished articles from the time of manufacture until shipment.)

BASIS OF CLAIM FOR DRAWBACK

(See section with this title for procedures under § 1313(b). Either repeat the same basis of claim or use a different basis of claim, as described above, specifically for drawback claimed under § 1313(a).)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;
5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;
6. Keep a copy of this application and the letter of approval by Customs Headquarters on

file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(a) & (b), part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of ____ _____ 19_____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

BY[6] _____

(Signature and Title)

_____

(Print Name)

([6] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.)

FORMAT FOR 1313(b) APPLICATION

COMPANY LETTERHEAD (Optional)

U.S. Customs Service
Entry and Carrier Rulings Branch
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Dear Sir:

We, (Applicant's Name), a (State, e.g. Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section

1313(b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(ies) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

CORPORATE OFFICERS

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In

addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;

New York, NY;

Miami, FL;

New Orleans, LA;

Houston, TX;

Long Beach, CA;

Chicago, IL;

San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:

1. Who will be the importer of the designated merchandise? (If the applicant will not always be the importer of the designated merchandise, does the applicant understand its

obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2), 55207(1), and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see § 191.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

(PARALLEL COLUMNS - "SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS[2] TO BE DESIGNATED AS THE BASIS	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH

FOR DRAWBACK ON THE EXPORTED PRODUCTS	WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS

([2] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under § 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

1.	1.
2.	2.
3.	3.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the "same kind and quality" of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the "same kind and quality". "Same kind and quality" does not necessarily mean that

the merchandise is identical. It does mean that the merchandise is of the same nature or character ("same kind") and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article ("same quality"). In order to enable Customs to rule on "same kind and quality", the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the "same kind and quality" statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, e.g., ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; etc. Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety

Data sheets or other descriptions of the merchandise that do not contribute to the "same kind and quality" determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, e.g. CAS number; Color Index Number, etc.)

(In order to expedite the specific manufacturing drawback ruling review process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the "same kind and quality" merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(b) is not allowable except where a manufacture or production exists. A manufacture or production exists when a "new and different article emerges having a distinctive name, character, or use", or when an article is made fit for a particular use (see 19 CFR 191.2(p); see also Anheuser-Busch Brewing Assoc. v. United States, 207 U.S. 556 (1907); United States v. International Paint Co., 35 CCPA 87 (1948), et al.). In order to obtain drawback under § 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a "new and different article" has been formed. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be

exported.)

BY-PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time

of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of by-products, but is not allowable on exports of valuable waste. In making this distinction between by-product or valuable waste, the applicant should address the following significant elements: (1) the nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each

product.)

(The BY-PRODUCT section consists of two sub-sections: Relative Values and Producibility. If no by-products result from your operation state "Not Applicable" for the entire section. If by-products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your by-product operation state "Not Applicable" for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise

appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles less valuable waste, state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process necessarily reduces the quantity of imported material used in manufacture in a current lot or period, in that the amount manufactured in any given batch does not

include the recycled merchandise going into the next batch. Therefore the amount of imported merchandise used in manufacture of exported articles is decreased.)

(If stock in process occurs, the application must include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

TRADEOFF

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provisions has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight"

unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;
2. The quantity of merchandise of the same kind and quality as the designated merchandise[3] we used to produce the exported articles ([3] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce.");
3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced[4] the exported articles. ([4] The date of production is the date an article is completed.)

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise.

Our records establishing our compliance with these requirements

will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED “SAME KIND AND QUALITY” WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g. within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will

permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Failure to describe how the specific records will show receipt, use and export may be a ground to deny use of the accelerated payment procedure until completion of a satisfactory audit. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less

Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 99

percent of the duty paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. "Appearing In" may not be used if by-products are involved unless the applicant agrees to value all products identically.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article may be based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste will replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.25(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be

equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds "Used In" or the 90 pounds "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may

be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the "Appearing In"

basis, neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;
5. Keep this application current by reporting

promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of ____ _____ 19_____, makes this application binding on

_____

(Name of Applicant Corporation,

Partnership, or Sole Proprietorship)

BY [5]_____

(Signature and Title)

_____

(Print Name)

([5] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.)

FORMAT FOR 1313(b) PETROLEUM DRAWBACK APPLICATION

COMPANY LETTERHEAD (Optional)

U.S. Customs Service

Entry and Carrier Rulings Branch

1301 Constitution Avenue, N.W.

Washington, D.C. 20229

Dear Sir:

We, (Applicant's Name), a (State, e.g. Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a).)

LOCATION OF REFINERY

(Give the address of the refinery(s) where the process of manufacture or production will take place. If the refinery is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

CORPORATE OFFICERS

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;

New York, NY;

Miami, FL;

New Orleans, LA;

Houston, TX;

Long Beach, CA;

Chicago, IL;

San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be

furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:

1. Who will be the importer of the designated merchandise? (If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see § 191.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will

be filed, do not include any reference to that procedure in this application.)

(PARALLEL COLUMNS - "SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS[2] TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS

([2]Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

We will substitute crude petroleum for crude petroleum and a petroleum derivative for the same petroleum derivative on a class-for-class basis only.

Class Designations:

Class I - API Gravity 0 - 11.9

Class II - API Gravity 12.0 - 24.9

Class III - API Gravity 25.0 - 44.9

Class IV - API Gravity 45 - up

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we

claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

EXPORTED ARTICLES PRODUCED FROM FRACTIONATION

1. Motor Gasoline
2. Aviation Gasoline
3. Special Naphthas
4. Jet Fuel
5. Kerosene & Range Oils
6. Distillate Oils
7. Residual Oils
8. Lubricating Oils
9. Paraffin Wax
10. Petroleum Coke
11. Asphalt
12. Road Oil
13. Still Gas
14. Liquified Petroleum Gas
15. Petrochemical Synthetic Rubber
16. Petrochemical Plastics & Resins
17. All Other Petrochemical Products

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name, state what the

product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

Heated crude oil is charged to an atmospheric distillation tower where it is subjected to fractionation. The charge to the distillation tower consists of a single crude oil, or of commingled crudes which are fed to the tower simultaneously or after blending in a tank. During fractionation, components of different boiling ranges are separated.

BY-PRODUCTS

1. Relative Values

Fractionation results in 17 products. In order to insure proper distribution of drawback to each of these products, we agree to record the relative values at the time of separation. The entire period covered by an abstract is to be treated as the time of separation. The value per unit of each product shall be the average market value for the abstract period.

2. Producibility

We can vary the proportionate quantity of each product. We understand that drawback is payable on exported products only to the extent that these products could have been produced from the designated merchandise. Our records will show that all of the products exported for which drawback will be claimed under this

specific manufacturing drawback ruling could have been produced concurrently on a practical operating basis from the designated merchandise.

We agree to establish the amount to be designated by reference to the Industry Standards of Potential Production published in T.D. 66-16.[3]

([3] A manufacturer who proposes to use standards other than those in T.D. 66-16 must state the proposed standards and provide sufficient information to the Customs Service in order for those proposed standards to be verified in accordance with T.D. 84-49.)

There are no valuable wastes as a result of the processing. Records will be kept in accordance with T.D. 84-49, as amended by T.D. 95-61.

LOSS OR GAIN

Because we keep records on a volume basis rather than a weight basis, it is anticipated that the material balance will show a volume gain. For the same reason, it is possible that occasionally the material balance will show a volume loss. Fluctuations in type of crude used, together with the type of finished product desired make an estimate of an average volume gain meaningless. However, records will be kept to show the amount of loss or gain with respect to the production of export products.

TRADEOFF

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provision has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated merchandise we used to produce the exported articles.

3. That, within 3 years after receiving it at our refinery, we used the designated merchandise to produce articles. During the same 3-year period, we produced the exported articles.

4(a). We agree to use a 28 - 31 day period (monthly) abstract period for each refinery covered by this application for a specific manufacturing drawback ruling.

(b). We propose to use an abstract period _____ (not to exceed 1 year) for each refinery covered by this application for a specific manufacturing drawback ruling. We certify that if we were to file abstracts covering each

manufacturing period of not less than 28 days and not more than 31 days (monthly) within the longer period, in no such monthly abstract would the quantity of designated merchandise exceed, for the same class of designated merchandise, the material introduced into the manufacturing process during that monthly period. (Select (a) or (b))

5. On each abstract of production we agree to show the value per barrel to five decimal places.

6. We agree to file claims in the format set forth in exhibits A through F which are attached to this application for a specific manufacturing drawback ruling.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

RESIDUAL RIGHTS

It is understood that the refiner can reserve as the basis for future payment the right to drawback only on the number of barrels of raw material computed by subtracting from Line E the larger of Lines A or B, of a given Exhibit E. It is further understood that this right to future payment can be claimed only

against products concurrently producible with the products listed in Column 21, in the quantities shown in Column 22 of such Exhibit E. Such residual right can be transferred to another refinery of the same refiner only when Line B of Exhibit E is larger than Line A. Unless the number of residual barrels is specifically computed and rights thereto are expressly reserved on Exhibit E, such residual rights shall be deemed waived. The procedure we shall follow in preparing drawback entries claiming this residual right is illustrated in the attached sample Exhibit E-1. It is understood that claims involving residual rights shall be filed only at the port where the Exhibit E reserving such right was filed.

INVENTORY PROCEDURES

We realize that inventory control is of major importance. In accordance with our normal accounting procedures, each refinery prepares a monthly stock and yield report, which accounts for inventories, production and disposals from time of receipt to time of disposition. This provides an audit trail of all products.

The above-noted records will provide the required audit trail from the initial source documents to our drawback claims and will support adherence with the requirements discussed under the heading PROCEDURES AND RECORDS MAINTAINED.

BASIS OF CLAIM FOR DRAWBACK

The amount of raw material on which drawback may be based shall be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount of any one type and class of raw material which may be designated as the basis for drawback on the exported products produced at a given refinery and covered by a drawback entry shall not exceed the quantity of such raw material used at the refinery during the abstract period or periods from which the exported products were produced. The quantity of raw material to be designated as the basis for drawback on exported products must be at least as great as the quantity of raw material of the same type and class which would be required to produce the exported products in the quantities exported.

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its refinery and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim

predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of ___ _____ 19_____, makes this application binding on

_____

(Name of Applicant Corporation,

Partnership, or Sole Proprietorship)

BY[4] _____

(Signature and Title)

_____

(Print Name)

([4] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs

port Customs power(s) of attorney is/are filed.)

(Exhibits A - F of the Petroleum Drawback Proposal Follow)

EXHIBIT A

ABSTRACT OF MANUFACTURING RECORDS
ABC OIL CO. INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Material Used (in Bbls. at 60°)

	TOTALS	CRUDES CLASS I	CRUDES CLASS II	CRUDES CLASS III	DERIVATIVES CRUDE TOPS CLASS IV	DERIVATIVES UNFINISHED CLASS IV	DERIVATIVES NAPHTHA CLASS IV
1) Opening Inventory	4,007,438						
2) Material Introduced	7,450,732	- 0 -	619,473	6,367,991	-0-	101,224	362,044
3) Closing Inventory	3,671,005						
4) Total Consumption	7,787,165						

Line (1) - Stock in process at beginning of manufacturing period.

Line (2) - Raw material introduced into manufacturing process during the period. The amount, by type and class, shown hereon, shall be the maximum that may be designated under T.D. 84-49.

Line (3) - Stock in process at end of period.

Line (4) - Total Consumed, namely, line 1 plus line 2 less line 3.

* All raw materials of a type and class not to be designated may be shown as a total.

EXHIBIT B

ABSTRACT OF PRODUCTION
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

(5) Product	(6) Quantity in Bbls.	(7) Value per Bbl.	(8) Value of Product	(9) Drawback Factor per Bbl.
1. Motor Gasoline	2,699,934	$ 6.14333	$16,586,586	1.06678
2. Aviation Gasoline	108,269	5.83363	631,601	1.01300
3. Special Naphthas	372,676	8.06356	3,005,095	1.40023
4. Jet Fuel	249,386	3.95698	986,815	.68712
5. Kerosine and Range Oil	321,263	4.69857	1,509,477	.81590
6. Distillate Oils	2,567,975	4.45713	11,445,798	.77398
7. Residual Oils	308,002	2.51322	774,077	.43642
8. Lubricating Oils	292,492	26.72296	7,816,252	4.64041
9. Paraffin Wax	19,063	10.49642	200,093	1.82269
10. Petroleum Coke	122,353	1.24291	152,074	.21583
11. Asphalt	75,231	3.59105	270,158	.62358
12. Road Oil	- 0 -	- 0 -	- 0 -	- 0 -

13. Still Gas	245,784	1.00530	247,087	.17457
14. Liquified Refinery Gas	524,423	2.23013	1,169,531	.38726
15. Petrochemical Synthetic Rubber	- 0 -	- 0 -	- 0 -	- 0 -
16. Petrochemical Plastics & Resins	- 0 -	- 0 -	- 0 -	- 0 -
17. All Other Petrochemical Products	7,996	6.21343	49,683	1.07895
Loss (or Gain)	(127,682)			
TOTAL	7,787,165		$ 44,844,327	

Col. (6) Products are shown in the net quantities realized in the refining process and do not include non-petroleum additives.

Col. (7) Weighted average realization for the period covered.

Col. (8) Column 6 multiplied by column 7.

Col. (9) Quantity of raw materials allowable per barrel of product. (Formula for obtaining drawback factors: $44,844,327 ÷ 7,787,165 bbls. = $5.75875 divided into product values per barrel equals drawback factor.)

EXHIBIT C

INVENTORY CONTROL SHEET
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

All quantities exclude non-petroleum additives

Drawback	Aviation Gasoline		Residual Oils		Lubricating Oils		Petrochemicals All Other	
	Bbls.	Drawback Factor	Bbls.	Drawback Factor	Bbls.	Drawback Factor	Bbls.	Factor
10) Opening Inventory	11,218	1.00126	21,221	45962	9,242	4.52178	891	1.00244
11) Production	108,269	1.01300	308,002	.43642	292,492	4.64041	7,996	1.07895
-A) Receipts	--	--	--	--	--	--	--	
--								
12) Exports	11,218	1.00126	21,221	.45962	8,774	4.52178	195	1.00244
	176	1.01300	104,397	.43642				
13) Drawback Deliveries	--	--	--	--	--	--	696	1.00244
						319	1.07895	
14) Domestic Shipments	97,863	1.01300	180,957	.43642	468	4.52178	6,867	1.07895
					278,286	4.64041		
15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10) - Opening inventory from previous period's closing inventory.
Line (11) - From production period under consideration.
Line (11-A) - Product received from other sources.
Line (12) - From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (see column 18).
Line (13) - Deliveries for export or for designation against further manufacture - earliest on hand after exports are deducted.
Line (14) - From earliest on hand after lines (12) and (13) are deducted.
Line (15) - Balance on hand.

EXHIBIT D

RECAPITULATION OF DRAWBACK ENTRY
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

(16) Product	(17) Quantity in Bbls. Exported	(18) Quantity in Bbls. in the Terms of the Abstract	(19) Drawback Factor per Bbl.	(20) Crude Allowed for Drawback in Bbls.	(20a) Crude to be Allowed for Drawback Deliveries in Bbls.
Aviation Gasoline	11,410	11,218	1.00126	11,232	
		176	1.01300	178	
Residual Oils	125,618	21,221	.45962	9,754	
		104,397	.43642	45,561	
Lubricating Oils	8,875	8,774	4.52178	39,674	
Petrochemicals - 698		696	1.00244		
Other 344		319	1.07895		
	195	195	1.00244	195	
TOTAL 1,042	146,098	146,996		106,594	

Duty paid on raw material selected for designation - $.1050 per bbl. (class III crude)
Amount of drawback claim - gross - 106,594 x .1050 = $11,192
Less 1% - 112
Amount of drawback claim - net $11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.

Col. (20) Raw materials (crude or derivatives) allowable, determined by multiplying column 18 by column 19.
Col. (20a) Raw materials (crude or derivatives) allowable, for drawback deliveries determined by multiplying column 18 by column 19.

EXHIBIT E

PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES)
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Type and Class of Raw Material Designated -- Crude, Class III

(21) Product	(22) Quantity In Barrels	(23) Industry Standard	(24) Quantity of Raw Material Of Type and Class Designated Needed To Produce Product
Aviation Gasoline	11,394	40%	28,485
Residual Oils	125,618	83%	151,347
Lubricating Oils	8,774	50%	17,548
Petrochemicals, other	(195)		
Petrochemicals, other (Drawback Deliveries)	(1,015)		
Petrochemicals - Total	1,210	29%	4,172
Total	146,996		

A - Crude allowed (column 20: 106,594 plus column 20a: 1,042 107,636 bbls.
B - Total quantity exported (including drawback deliveries)(column 22): 146,996 "
C - Largest quantity of raw material needed to produce an individual exported product (see column 24):
151,347 "
D - The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered).
NONE
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable):
151,347 "

I hereby certify that all the above drawback deliveries and products exported by the Beaumont Refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995 could have been produced concurrently on a practical operating basis from

151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E - 1

PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED

ABC OIL CO., INC. - TULSA, OKLAHOMA REFINERY

PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Type and Class of Raw Material Designated - Crude, Class III

(19) Product	(21) Crude Allowance Factor	(22) Quantity in Barrels	(23) Industry Standard Drawback	(20) Quantity of Raw Material Of Type & Class Designated Needed to Produce Product Separate	Combined	Covered By: 1. Period 2. Refinery	(24) Drawback per Barrel
Aviation Gasoline	1.00126	11,394	40%	28,485	29,125		
	1.01300			11,232			
				178			
Residual Oils		125,618	83%	151,347	151,347	1. Jan. 1995	
	.45962	9,754					
				45,561			
Lubricating Oils	.43642	8,774	50%	17,548	17,932	2. Beaumont	
	4.52178	39,674					
Petrochemicals, Other		(195)					
	1.00244			195			
Petrochemicals, Other (Drawback Deliveries)		(1,015)					
		1,210	29%	4,172	4,503		
[Residual Rights]							
Aviation Gasoline		256	40%	640	29,125		
	1.01265		259	259			
Lubricating Oils		192	50%	384	17,932	1. Jan. 1995	
	4.59006	881		881			
Petrochemicals, Other		96	29%	331	4,503	2. Tulsa	
	1.12412		108	108			
Distillate Oils		3807	89%	4,278	4,278		
	.76624			2,917			
						Subtotal	
	4,165						
		151,347					
		Total		110,759			

A - Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042) 111,801 bbls. Drawback Computation

B - Total quantity exported (including drawback deliveries)(column 22): 151,347 "

4,165*bbls. @10½ = $437.33

C - Largest quantity of raw material needed to produce an individual exported product (see col. 24): 151,347
Less 1% 4.37

D - The excess of raw material over the largest of line A, B, or C, required to produce concurrently
Amount of Drawback
on a practical operating basis, using the most efficient processing equipment existing within
Claim - Net $432.96
the domestic industry, the exported articles (including drawback deliveries) in the quantities
exported (or delivered): **NONE** **See subtotal, col.20, for Residual**

E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is
Rights above
largest, plus D, if applicable):
151,347

CERTIFICATE

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc., during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 1995 to January 31, 1995, filed by the Beaumont, Texas refinery of the company from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

The attached sample, **EXHIBIT E (COMBINATION)**, illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on **EXHIBIT D** will be as follows:

Duty paid on raw material selected for designation:

$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

Amount of drawback claim -	gross:	81,638	x	.1050=	$8,571.99
		24,956	x	.0525=	$1,310.19
					$9,882.18
	(Rounded Off)				9,882
	Less 1%				-99
Amount of drawback claim -	net:				$9,783

EXHIBIT E (COMBINATION)

PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES)
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Type and Class of Raw Material Designated - Crude, Class III

(21) Product	(22) Quantity in Barrels	(23) Industry Standard	(24) Quantity of Raw Material Needed to Produce Product	(19) Drawback Factor	(20) Crude Allowed for Drawback
Aviation Gasoline	11,218	40%	28,485	1.00126	11,232
	176			1.01300	178
Residual Oils	21,221	83%	25,567	.45962	9,754
	47,214	83%	56,884	.43642	20,605
Lubricating Oils	8,774	50%	17,548	4.52178	39,674
Petrochemicals, Other	195			1.00244	195
Petrochemicals, Other	696			1.00244	
(Drawback Deliveries)	319			1.07895	
	1,210	29%	4,172		
TOTAL	89,813				81,638

A - Crude allowed (column 20: 81,638; plus crude allowed for drawback deliveries: 1,042):
82,680 bbls.
B - Total quantity exported (including drawback deliveries) (column 22):
89,813 "
C - Largest quantity of raw material needed to produce an individual exported product (see column 24):
82,451 "
D - The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical

operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered):

10,187

E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 100,000 bbs.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis from 100,000 barrel of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT F

DESIGNATIONS FOR DRAWBACK CLAIM
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 - TO JANUARY 31, 1995

Certificate of Delivery Number	Entry Number	Date of Importation	Kind of Materials	Quantity of Materials in Barrels	Date Received	Date Consumed	Rate of Duty
-	26192	04/13/93	Class III Crude	75,125	04/13/93	May 1993	$.1050
-	23990	08/04/94	"	37,240	08/04/94	Oct. 1994	.1050
3155	22517	10/05/94	"	38,982	10/05/94	Nov. 1994	.1050

FORMAT FOR 1313(d) APPLICATION

COMPANY LETTERHEAD (Optional)

U.S. Customs Service

Entry and Carrier Rulings Branch

1301 Constitution Avenue, N.W.

Washington, D.C. 20229

Dear Sir:

We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(d), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

CORPORATE OFFICERS

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;

New York, NY;

Miami, FL;

New Orleans, LA;

Houston, TX;

Long Beach, CA;

Chicago, IL;

San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The exact material placed under this heading in individual cases will vary, but it should include such information as the type of business in which the manufacturer is engaged, whether the manufacturer is manufacturing for his own account or is performing the operation on a toll basis (including commission or conversion basis) for the account of others, whether the manufacturer is a direct exporter of his products or sells or delivers them to others for export, and whether drawback will be claimed by the manufacturer or by others.)

(Regarding drawback operations conducted under § 1313(d), the data may describe the flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured with the use of domestic tax-paid alcohol; and where such alcohol is obtained or purchased.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this

application.)

TAX-PAID MATERIAL USED UNDER SECTION 1313(d)

(Describe or list the tax-paid material)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(d) is not allowable except where a manufacture or production exists. A manufacture or production exists when a "new and different article emerges having a distinctive name, character, or use", or when an article is made fit for a particular use (see 19 CFR 191.2(p); see also (Anheuser-Busch Brewing Assoc. v. United States, 207 U.S. 556 (1907); United States v. International Paint Co., 35 CCPA 87 (1948), et al.). In order to obtain drawback under § 1313(d), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) whether or not it is recovered, (2)

whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in

producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process necessarily reduces the quantity of domestic tax-paid alcohol used in manufacture in a current lot or period, in that the amount manufactured in any given batch does not include the recycled merchandise going into the next batch. Therefore, the amount of domestic tax-paid alcohol used in manufacture of exported articles is decreased.)

(If stock in process occurs, the application must include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the domestic tax-paid alcohol used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual

percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and
2. The quantity of domestic tax-paid alcohol[2] we used in producing the exported articles. ([2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce.")

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(d) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

MANUFACTURING RECORDS

FINISHED STOCK STORAGE RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 100% of the tax paid on the quantity of domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparation (including perfumery).)

(For example, if 100 gallons of alcohol, valued at $1.00 per gallon, were used in manufacture resulting in 10 gallons of irrecoverable or valueless waste, the 10

gallons of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 100% of the tax paid on the 100 gallons of domestic alcohol used to produce the exported articles.)

The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 100% of the tax paid on the quantity of domestic alcohol which appears in the exported articles.

(Based on the previous example, drawback would be payable on the 90 gallons of domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of domestic tax-paid alcohol. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the

exported article is based on the quantity of tax-paid alcohol used to manufacture the exported articles, reduced by the quantity of such alcohol which the value of the waste will replace.)

(Based on the previous examples, if the 10 gallons of waste had a value of $.50 per gallon, then the 10 gallons of waste, having a total value of $5.00, would be equivalent in value to 5 gallons of the tax-paid alcohol. Thus the value of the waste would replace 5 gallons of the alcohol used, and drawback is payable on 100% of the tax paid on 95 gallons of alcohol rather than on the 100 gallons "Used In" or the 90 gallons "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by

actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the

quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the "Appearing In" basis, neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or

factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(d), part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of

_____19_____, makes this application binding on

_____

(Name of Applicant Corporation,
Partnership, or Sole Proprietorship)

BY[3] _____

(Signature and Title)

_____

(Print Name)

([3] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.)

FORMAT FOR 1313(g) APPLICATION

COMPANY LETTERHEAD (Optional)

U.S. Customs Service

Entry and Carrier Rulings Branch

1301 Constitution Avenue, N.W.

Washington, D.C. 20229

Dear Sir:

We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(g), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a).)

LOCATION OF FACTORY OR SHIPYARD

(Give the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. If the factory or

shipyard is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

CORPORATE OFFICERS

(List officers and other persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any other individual legally authorized to bind corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively.)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at:

Boston, MA;

New York, NY;

Miami, FL;

New Orleans, LA;

Houston, TX;

Long Beach, CA;

Chicago, IL;

San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, two additional copies of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:

1. Who will be the importer of the merchandise?

(If the applicant will not always be the importer, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Who is the manufacturer?

(Is the applicant constructing and equipping for his own account or merely performing the operation on a toll basis for others?)

3. Will the applicant be the drawback claimant?

(State how the vessel will qualify for drawback under 19 U.S.C. 1313(g). Who is the foreign person or government for whom the vessel is being made or equipped?)

(There shall be included under this heading the following statement:

> We are particularly aware of the terms of section 191.76(a)(1) of and subpart M of part 191 of the Customs Regulations, and shall comply with these sections where appropriate.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED

(Describe the imported merchandise or drawback products)

ARTICLES CONSTRUCTED AND EQUIPPED FOR EXPORT

(Name the vessel or vessels to be made with imported merchandise or drawback products)

PROCESS OF CONSTRUCTION AND EQUIPMENT

(What is required here is a clear, concise description of the process of construction and equipment involved. The description should also trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported or drawback merchandise and of the articles resulting from the processing.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used

in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section

below.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That an exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and
2. The quantity of imported merchandise[2] we used in producing the exported article. ([2] If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce.")

We realize that to obtain drawback the claimant must establish

that the completed articles were exported within 5 years after the importation of the imported merchandise.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313 and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

CONSTRUCTION AND EQUIPMENT RECORDS

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback

is payable in the amount of 99 percent of the duty paid on the quantity of imported material used to construct and equip the exported article.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)

(The "Appearing In" basis may be used regardless of whether there is waste. It the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 99 percent of the duty paid on the quantity of imported material which appears in the exported articles. "Appearing In" may not be used if by-products are involved unless the applicant agrees to value all products identically.)

(Based on the previous example, drawback would be payable on the 90 pounds of imported material which actually went into the exported product (appearing in)

rather than the 100 pounds used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article may be based on the duty paid on the quantity of imported material used to construct and equip the exported product, reduced by the quantity of such material which the value of the waste will replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.25(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the imported material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material rather than on the 100 pounds "Used In" or the 90 pounds "Appearing In" as set forth in the

above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 331) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

> We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

> We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Except as noted above in the explanation of the "Appearing In" basis, neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of

this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, corporate officers, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned

to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(g), part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of ____ _____ 19_____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

BY[3] _____

(Signature and Title)

_____

(Print Name)

([3] Section 191.6(a) of the Customs Regulations requires that applications for specific manufacturing drawback rulings be signed by the owner of a sole proprietorship, a partner in a partnership, or the president, vice president, secretary, treasurer or other individual legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port Customs power(s) of attorney is/are filed.)

Commissioner of Customs

Approved:

Deputy Assistant Secretary of the Treasury